THE GENERAL STATUTES OF NORTH CAROLINA

1977 CUMULATIVE SUPPLEMENT

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

UNDER THE DIRECTION OF

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

Volume 3B

1974 Replacement

Annotated through 292 N.C. 643 and 33 N.C. App. 240. For complete scope of annotations, see scope of volume page.

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

THE MICHIE COMPANY

Law Publishers

CHARLOTTESVILLE, VIRGINIA

1977

THE GENERAL STATUTES OF NORTH CAROLINA

1977 SUPPLEMENT

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

UNDER THE DIRECTION OF

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

Volume 3B

1974 Replacement

Annotated through 292 N.C. 643 and 33 N.C. App. 240. For complete scope of annotations, see scope of volume page.

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

THE MICHIE COMPANY

Law Publishers

CHARLOTTESVILLE, VIRGINIA

1977

Preface

This Cumulative Supplement to Replacement Volume 3B contains the general laws of a permanent nature enacted at the Second 1973, the First and Second 1975 and the 1977 Sessions of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein. At the Second 1973 Session, which was held in 1974, the General Assembly enacted Session Laws 1973, Chapters 827 to 1482.

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

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

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

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

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

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the Second 1973, the First and Second 1975 and the 1977 Sessions of the General Assembly affecting Chapters 117 through 136 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 283 (p. 589)-292 (p. 643).
North Carolina Court of Appeals Reports volumes 18 (p. 352)-33 (p. 240).
Federal Reporter 2nd Series volumes 476 (p. 657)-554 (p. 1074).
Federal Supplement volumes 357-431 (p. 434).
Federal Rules Decisions volumes 56 (p. 663)-74 (p. 213).
United States Reports volumes 411 (p. 526)-419 (p. 984).
Supreme Court Reporter volumes 93 (p. 2789)-97 (p. 2204).
North Carolina Law Review volume 55 (pp. 1-750).
Wake Forest Intramural Law Review volumes 6-13 (p. 269).
Duke Law Journal volumes 3 (p. 485)-6 (p. 1395).
North Carolina Central Law Journal volume 2 (pp. 1-164), volume 3 (pp. 123-268), volume 7 (pp. 201-413), volume 8 (pp. 1-122).
Opinions of the Attorney General.

The General Statutes of North Carolina
1977 Cumulative Supplement

VOLUME 3B

Chapter 117.

Electrification.

ARTICLE 1.

Rural Electrification Authority.

§ 117-1. Rural Electrification Authority created; appointments; terms of members. — An agency to be known as the North Carolina Rural Electrification Authority is hereby created as an agency of the State of North Carolina, such agency to consist of five members to be appointed by the Governor of North Carolina. Current members of the North Carolina Rural Electrification Authority shall complete their respective terms of office. On or after June 5, 1975, the Governor shall appoint two members to replace those members whose terms expire on said date. All appointments made by the Governor shall be made for terms of four years. (1935, c. 288, s. 1; 1975, c. 709, s. 7.)

Editor's Note. —
The 1975 amendment, in the first sentence, substituted "agency" for "Authority" and "five" for "six," deleted at the end of that sentence language specifying the terms of the members, and added the second, third and fourth sentences.

§ 117-5. Compensation and expenses. — All members of the Authority, except the secretary, shall receive as compensation for their services per diem and actual expenses incurred while in the performance of their duties in accordance with the provisions of G.S. 138-5. (1935, c. 288, s. 5; 1939, c. 97; 1975, c. 709, s. 8.)

Editor's Note. — The 1975 amendment deleted "chairman and" preceding "secretary," substituted "per diem" for "the sum of seven dollars ($7.00) per day," and added "in accordance with the provisions of G.S. 138-5." The amendment also deleted the former second sentence.

ARTICLE 2.

Electric Membership Corporations.

§ 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. The board shall elect annually from its own number a president and a secretary. (1935, c. 291, s. 8; 1959, c. 387, s. 1; 1969, c. 760; 1975, c. 314.)

Editor's Note. — The 1975 amendment deleted at the end of the next-to-last sentence a proviso limiting the compensation of the directors to $30.00 for each day of attendance at meetings.

§ 117-18. Specific grant of powers. — Subject only to the Constitution of the State, a corporation created under the provisions of this Article shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

(6) The right to apply to the North Carolina Rural Electrification Authority for permission to construct or place any parts of its system or lines in and along any State highway or over any lands which are now, or may be, the property of this State, or any political subdivision thereof. In all questions involving the right-of-way, or the right of eminent domain, the rulings of the North Carolina Electrification Authority shall be final. Notwithstanding the foregoing sentence and notwithstanding subdivision (7) of G.S. 117-2, electric membership corporations are hereby empowered, without necessity of the Authority's rulings or participation, to exercise the right of eminent domain for the purposes of constructing, operating and maintaining electric generating, transmission, distribution and related facilities, individually and solely in their own names, pursuant to the provisions of Chapter 40 of the General Statutes; provided, that notwithstanding G.S. 117-30, the foregoing grant of the power of eminent domain to electric membership corporations shall not apply to telephone membership corporations; and, provided further, that such grant of power shall be supplementary to the power of eminent domain already devolved upon the Authority.

(1975, c. 141.)

Editor's Note. — The 1975 amendment added the last sentence of subdivision (6).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (6) are set out.

Chapter 118.

Firemen's Relief Fund.

Article 1.

Fund Derived from Fire Insurance Companies.

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

Local Supplemental Firemen's Retirement Funds. — City of Conover: 1977, c. 334; city of Eden: 1977, c. 285; city of Gastonia: 1975, c. 51, amending 1949, c. 537, s. 5, as amended by 1957, c. 111, s. 2; city of Lenoir: 1973, c. 1261; city of Lincolnton: 1977, c. 353; city of Lumberton: 1973, c. 960, amending 1955, c. 100; city of Monroe: 1975, c. 31; city of Raleigh: 1969, c. 421; 1975, c. 504; city of Reidsville: 1973, c. 1159, amending 1969, c. 412; city of Roanoke Rapids: 1977, c. 312; city of Sanford: 1975, c. 353, amending 1971, c. 1155; city of Washington: 1975, c. 418; city of Wilmington: 1973, c. 939, amending 1949, c. 684; 1975, c. 247; town of Smithfield: 1973, c. 941; village of Kannapolis: 1975, c. 423, amending 1971, c. 408.

By virtue of Session Laws 1977, c. 289, city of Statesville should be stricken from the replacement volume.

§ 118-6. Trustees appointed; organization. — In each town or city complying with and deriving benefits from the provisions of this Article, there shall be appointed a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be elected by the members of the local fire department, two elected by the mayor and board of aldermen or other local governing body, the remaining member to be named by the Commissioner of Insurance. Their selection and term of office shall be as follows:

(1) The members of the fire department shall hold an election each January to elect their representatives to above board. In January 1950, the firemen shall elect one member to serve for two years and one member to serve for one year, then each year in January thereafter, they shall elect only one member and his term of office shall be for two years.
(2) The mayor and board of aldermen or other local governing body shall appoint, in January 1950, two representatives to above board, one to hold office for two years and one to hold office for one year, and each year in January thereafter they shall appoint only one representative and his term of office shall be for two years.
(3) The Commissioner of Insurance shall appoint one representative to serve as trustee and he shall serve at the pleasure of the Commissioner.

All of the above trustees shall hold office for their elected or appointed time, or until their successors are elected or appointed, and shall serve without pay for their services. They shall immediately after election and appointment organize by electing from their members a chairman and a secretary and treasurer, which two last positions may be held by the same person. The treasurer of said board of trustees shall give a good and sufficient bond in a sum equal to the amount of moneys in his hands, to be approved by the Commissioner of Insurance, for the faithful and proper discharge of the duties of his office. If the chief of the local fire department is not named on the board of trustees as above provided, he shall be ex officio a member, but without the privilege of voting on matters before the board. (1907, c. 831, s. 6; C. S., s. 6068; 1925, c. 41; 1945, c. 74, s. 1; 1947, c. 720; 1949, c. 1054; 1973, c. 1365.)

Editor's Note. — The 1973 amendment, effective Feb. 1, 1975, substituted "to serve as trustee" for "in January each year" and "serve at the pleasure of the Commissioner" for "serve for one year" in subdivision (3).

ARTICLE 3.

North Carolina Firemen's Pension Fund.

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

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

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

Editor's Note. — The 1973 amendment substituted "State Auditor" for "State Insurance Commissioner" in subdivision (1) and "State Insurance Commissioner" for "State Auditor" in subdivision (2) and rewrote the last paragraph of the section.

§ 118-25. Monthly pensions upon retirement. — Any member who has served 20 years as a fireman in the State of North Carolina, who has been an "eligible fireman" for two years immediately preceding his application for the payment of a pension hereunder and who is otherwise eligible as provided in G.S. 118-23 hereof, and who has attained the age of 55 years shall be entitled to be paid from the fund herein created a monthly pension. Said monthly pension shall be in the amount of fifty dollars ($50.00) per month. Any retired fireman who is receiving a pension in an amount of less than fifty dollars ($50.00) per month prior to July 1, 1977, shall receive a pension in an amount of fifty dollars ($50.00) per month beginning July 1, 1977.

Members shall pay five dollars ($5.00) per month as required by G.S. 118-24 until retirement from active service or until they shall have made said monthly payments for a period of 20 years, whichever first occurs; provided, any member retiring after 20 years of service, but before reaching the age of 55 years, shall continue to pay the monthly payments required by G.S. 118-24 in order to continue his membership in the fund until he shall reach the age of 55 or until

he shall have paid said monthly payments into the fund for 20 years, whichever is the earlier. Upon reaching retirement age and being otherwise eligible he shall receive a pension as set out above. Notwithstanding the above provisions, no person shall receive a pension hereunder prior to January 1, 1960, but those persons eligible and retiring prior to said date who have paid into said fund five dollars ($5.00) per month with respect to a period of not less than 12 months or sixty dollars ($60.00) whichever occurs first, shall be entitled to a pension in the amount of fifty dollars ($50.00) per month.

Any member who is totally and permanently disabled while in the discharge of his official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of his official duties and who leaves the fire service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of fifty dollars ($50.00) per month beginning the first month after his fifty-fifth birthday. All disabilities are subject to the approval of the board of trustees who may appoint physicians to examine and/or evaluate the disabled member prior to his approval annually and at their discretion. Any disabled member shall not be required to make a monthly payment of five dollars ($5.00) as required by G.S. 118-24.

The pension herein provided for shall be in addition to all other pensions or benefits provided for under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1971, c. 336; 1977, c. 926, s. 1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, deleted language providing for the election of a reduced pension amount by certain members, including a chart of amounts, from the end of the second sentence of the first paragraph, added the third sentence of the first paragraph, deleted "or such reduced amount as set out above commencing January 1, 1960" from the end of the third sentence of the second paragraph, and added the third 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 55 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 55 years as may be necessary to entitle him to the pension as herein provided.

(1977, c. 926, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "55 years" for "60 years" in two places in subdivision (1).

As the other subdivisions were not changed by the amendment, only the introductory language and subdivision (1) are set out.

§ 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 G.S. 118-24 of this Article by the tenth of the month with respect to which said payment shall be due shall forfeit his

membership in the fund. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1977, c. 926, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "G.S. 118-24" for "G.S. 118-23" and "forfeit his membership in the fund" for "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."

Chapter 118A.

Firemen's Death Benefit Act.

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

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

Chapter 118B.

Members of a Rescue Squad Death Benefit Act.

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

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

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 3.

Gasoline and Oil Inspection.

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

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

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

Article 4.

Liquefied Petroleum Gases.

§ 119-49. Minimum standards adopted; power of Board of Agriculture to make changes or additions; regulation by political subdivisions. — The standards as set forth in Pamphlet No. 58 of the National Fire Protection Association entitled "The Storage and Handling of Liquefied Petroleum Gases" dated 1976, and Pamphlet No. 54 of the National Fire Protection Association entitled "American National Standard, National Fuel Gas Code" dated 1974, and the rules and regulations promulgated by the North Carolina State Board of Agriculture are hereby adopted, as is 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 15 days' notice. After adoption by the Board of Agriculture of such provision or provisions, as it may consider necessary in furtherance of the purposes of this Article, such provision or provisions shall become a part of this safety code to the same extent as if written in this Article.

Any municipality or political subdivision may adopt and enforce a safety code dealing with the handling of liquefied petroleum gas, which code shall conform with the code adopted by the State Board of Agriculture, and the inspection service rendered by such municipality or political subdivision shall conform to

the requirements of the inspection service rendered by the State Board of Agriculture in the enforcement of this Article. (1955, c. 487; 1959, c. 796, s. 2; 1961, c. 1072; 1963, c. 671; 1967, c. 1231; 1969, c. 1133; 1975, c. 610, s. 1; 1977, c. 410.)

Editor's Note. — The 1975 amendment substituted "1974" for "1969" in the provision relating to Pamphlet No. 58 near the beginning of the first sentence of the first paragraph and substituted "AMERICAN NATIONAL STANDARD, NATIONAL FUEL GAS CODE dated 1974" for "INSTALLATION OF GAS APPLIANCES AND GAS PIPING dated 1969" in that sentence.

The 1977 amendment substituted "1976" for "1974" in the first sentence of the first paragraph.

Chapter 120.

General Assembly.

Article 1.

Apportionment of Members; Compensation and Allowances.

Article 5A.

Committee Activity.

Article 6B.

Legislative Research Commission.

Article 6C.

Review of Administrative Rules.

Article 7.

Legislative Services Commission.

Article 9.

Lobbying.

Article 9A.

Lobbying.

Article 12.

Commission on Children with Special Needs.

Article 13.

"Joint" Legislative Commission on Governmental Operations.

ARTICLE 1.

Apportionment of Members; Compensation and Allowances.

§ 120-3. Pay of members and officers of the General Assembly. — (a) The Speaker of the House shall be paid an annual salary of nine thousand dollars ($9,000), payable monthly, and an expense allowance of two hundred fifty dollars ($250.00) per month. The President pro tempore of the Senate, the Speaker pro tempore of the House, the minority leader in the House and the minority leader in the Senate shall each be paid an annual salary of six thousand dollars ($6,000), payable monthly, and an expense allowance of one hundred fifty dollars ($150.00) per month. Every other member of the General Assembly shall be paid an annual salary of four thousand eight hundred dollars ($4,800), payable monthly, and an expense allowance of one hundred dollars ($100.00) per month. The salary and expense allowances provided in this action [section] are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission.

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

Editor's Note. —

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

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

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

(1) A weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or extra session. The amount of the weekly travel allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate per mile allowed to State employees for official travel.

(2) A travel allowance at the rate allowed by statute for State employees whenever the member is traveling as a representative of the General Assembly or of its committees or commissions, whether in or out of session, when such travel has been authorized by the Legislative Services Commission.

(3) A subsistence allowance in the amount of thirty-five dollars ($35.00) per day for each day of the period during which the General Assembly remains in session.

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

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

(c) When the General Assembly by joint action of the two houses adjourns to a day certain, which day is more than three days after the date of adjournment, the period between the date of adjournment and the date of reconvening shall for the purposes of this section be deemed to be a period when the General Assembly is not in session, and no member shall be entitled to subsistence and travel allowance during that period, except under circumstances which would entitle him to subsistence and travel allowance when the General Assembly is not in session. (1957, c. 8; 1959, c. 939; 1961, c. 889; 1965, c. 86, s. 1; 1969, c. 1257, s. 1; 1971, c. 1200, ss. 1-4; 1973, c. 1482, s. 2.)

Editor's Note. —
The 1973 amendment, effective as of the end of the term of the members of the 1973 General Assembly, rewrote this section.

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

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

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

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

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

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

ARTICLE 5.

Investigating Committees.

§ 120-14. Power of committees.

Editor's Note. — In the historical citation to this section in the replacement volume, "1869-70, c. 5," should be substituted for "1868-69, c. 50."

ARTICLE 5A.

Committee Activity.

§ 120-19.4. Failure to respond to subpoena or refusal to testify punishable as contempt. — (a) Any person who without good cause fails to obey a subpoena which was served upon him, or, fails or refuses to testify shall be deemed to be in contempt of the committee and shall be punished as in the case of a civil contempt under the procedures set out in subsection (b). Any person whose action in the immediate presence of the committee directly tends to disrupt its proceedings may also be punished as in the case of a civil contempt under the procedures set out in subsection (b).

(b) If by a majority vote the committee deems that any person is in contempt under the provisions of subsection (a) the committee shall file a complaint signed by the chairman in the General Court of Justice, superior court division, requesting that the court issue an order directing that the person appear within a reasonable time and show good cause why he should not be held in contempt of the committee or its processes. If the person does not establish good cause the court shall punish the person in accordance with the provisions of G.S. 5-4. (1973, c. 543; 1977, c. 344, s. 2.)

Editor's Note. — The 1977 amendment, effective Aug. 1, 1977, rewrote this section.

ARTICLE 6B.

Legislative Research Commission.

§ 120-30.10. Creation; appointment of members; members ex officio. — (a) There is hereby created a Legislative Research Commission to consist of five Senators to be appointed by the President pro tempore of the Senate and five Representatives to be appointed by the Speaker of the House. The President pro tempore of the Senate and the Speaker of the House shall be ex officio members of the Legislative Research Commission. Provided, that when the President of the Senate has been elected by the Senate from its own membership, then the President of the Senate shall make the appointments of the Senate members of the Legislative Research Commission, shall serve ex officio as a member of the Commission and shall perform the duties otherwise vested in the President pro tempore by G.S. 120-30.13 and 120-30.14.

(b) The cochairmen of the Legislative Research Commission may appoint additional members of the General Assembly to work with the regular members of the Research Commission on study committees. The terms of the additional study committee members shall be limited by the same provisions as apply to regular commission members, and they may be further limited by the appointing authorities.

(c) The cochairmen of the Legislative Research Commission may appoint persons who are not members of the General Assembly to advisory subcommittees. The terms of advisory subcommittee members shall be limited by the same provisions as apply to regular Commission members, and they may be further limited by the appointing authorities. (1965, c. 1045, s. 1; 1975, c. 692, s. 1.)

Editor's Note. — The 1975 amendment designated the former provisions of the section as subsection (a) and added subsections (b) and (c).

§ 120-30.11. Time of appointments; terms of office. — Appointments to the Legislative Research Commission shall be made within 15 days subsequent to the close of each regular session of the General Assembly held in the odd-numbered calendar years. The term of office shall begin on the day of appointment, and shall end on the date when the next biennial session of the General Assembly convenes in the following odd-numbered calendar year or at the time of appointment of the subsequent Commission, whichever shall be later. (1965, c. 1045, s. 2; 1975, c. 692, s. 2; 1977, c. 915, s. 4.)

Editor's Note. — The 1975 amendment added "held in the odd-numbered calendar years" at the end of the first sentence, substituted "biennial session" for "regular session" in the second sentence and added "in the following odd-numbered calendar year" at the end of that sentence.

The 1977 amendment, effective Oct. 1, 1977, added "or at the time of appointment of the subsequent Commission, whichever shall be later" to the end of the section. Session Laws 1977, c. 915, s. 10, provides: "This act shall become effective on October 1, 1977, and shall expire on June 30, 1979."

Session Laws 1977, c. 915, s. 9, contains a severability clause.

§ 120-30.17. Powers and duties. — The Legislative Research Commission has the following powers and duties:

(5) To review the rules of all administrative agencies pursuant to Article 6C of this Chapter to determine whether or not the agencies acted within their statutory authority in promulgating the rules.

(6) To meet during the regular session of the General Assembly only for the purposes of reviewing rules pursuant to G.S. 120-30.25 or holding public hearings pursuant to G.S. 120-30.30. (1965, c. 1045, s. 8; 1969, c. 1184, s. 8; 1977, c. 915, s. 3.)

Editor's Note. — The 1977 amendment, effective Oct. 1, 1977, added subdivisions (5) and (6). Session Laws 1977, c. 915, s. 10, provides: "This act shall become effective on October 1, 1977, and shall expire on June 30, 1979."

Session Laws 1977, c. 915, s. 9, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (5) and (6) are set out.

§ 120-30.18. Facilities; compensation of members; payments from appropriations. — The facilities of the State Legislative Building shall be available to the Commission for its work. Members of the General Assembly serving on the Legislative Research Commission or its study committees shall be reimbursed for travel and subsistence expenses at the rates set out in G.S. 120-3.1. Advisory subcommittee members shall be reimbursed and compensated at the rates set out in G.S. 138-5 (public members) and G.S. 138-6 (State officials or employees). All expenses of the Commission shall be paid from funds appropriated for the Commission. (1965, c. 1045, s. 9; 1975, c. 692, s. 3.)

Editor's Note. —
The 1975 amendment rewrote the last two sentences.

§§ 120-30.19 to 120-30.23: Reserved for future codification purposes.

ARTICLE 6C.

Review of Administrative Rules.

§ 120-30.24. Definitions. — As used in this Article:

(1) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the executive branch of State government, any provision of any other statute to the contrary notwithstanding. The provisions of this Article do not apply to agencies in the judicial branch of State government, agencies in the legislative branch of State government, the Industrial Commission, the Utilities Commission, counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, county or city boards of education, the University of North Carolina, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(2) "Commission" means the Legislative Research Commission.

(3) "Committee" means the Administrative Rules Review Committee created by G.S. 120-30.21.

(4) "Director" means the Director of Research of the Legislative Services Commission.

(5) "Rule" means every rule, regulation, ordinance, standard, and amendment thereto or repeal thereof adopted by any agency and includes rules and regulations regarding substantive matters, standards for products, and procedural rules for complying with statutory or regulatory authority or with requirements or executive orders of the Governor.

"Rule" does not include:

a. Rules, procedures, or regulations that relate only to the internal management of an agency;

b. Directives or advisory opinions to any specifically named person or group with no general applicability throughout the State;

c. Disposition of any specific issue or matter by the process of adjudication; or

d. Orders establishing or fixing rates or tariffs. (1977, c. 915, s. 1.)

Cross References. — For procedure for adoption of rules, see § 150A-12. For provisions relating to publication of administrative rules, see § 150A-58 et seq.

Editor's Note. — Session Laws 1977, c. 915, s. 9, contains a severability clause.

Session Laws 1977, c. 915, s. 10, provides: "This act shall become effective on October 1, 1977, and shall expire on June 30, 1979."

§ 120-30.25. Filing of rules. — (a) On October 1, 1977, the Attorney General shall transfer to the office of the Legislative Research Commission a copy of every rule that has been filed with him pursuant to Article 5 of General Statutes Chapter 150A. Rules adopted prior to October 1, 1977, may be reviewed by the Committee and by the Commission.

(b) Rules adopted by an agency on or after October 1, 1977, shall be filed in the office of the Director at the same time filing is made with the Attorney General pursuant to G.S. 150A-59.

(c) The rules filed with the Director pursuant to subsection (b) of this section shall be accompanied by a report. This report shall contain:

(1) A brief summary of the content of the rule if adopted or repealed, or a brief summary of the change in the rule if amended;
(2) A citation of the enabling legislation purporting to authorize the adoption, amendment, or repeal of the rule;
(3) A statement of the circumstances that required adoption, amendment, or repeal of the rule; and
(4) A statement of the effective date of the rule.

(d) Executive orders of the Governor are required to be filed, but executive orders of the Governor are not subject to the provisions of G.S. 120-30.23 through G.S. 120-30.30. (1977, c. 915, s. 1.)

Editor's Note. — Session Laws 1977, c. 915, s. 6, provides: "All agencies, as defined by G.S. 120-30.19(a)(1) [G.S. 120-30.24(1)] and that were not subject to the provisions of G.S. 150A-59 prior to the effective date of this act, shall file in the office of the Director of Research of the Legislative Services Commission copies of all rules, as defined in G.S. 120-30.19(b)(4) [G.S. 120-30.24(4)], that were adopted prior to October 1, 1977."

§ 120-30.26. Administrative Rules Review Committee. — There is created a permanent committee of the Legislative Research Commission to be known as the Administrative Rules Review Committee. The Committee shall be composed of seven members. On October 1, 1977, the cochairmen of the Commission shall appoint the Committee members from the membership of the General Assembly for terms of two years, and the members so appointed shall elect one of their number to serve as chairman. Any vacancy that occurs in the membership of the Committee for any reason other than the expiration of a term shall be filled for the remainder of the unexpired term by election of a member of the General Assembly by the Commission at its next meeting after the occurrence of the vacancy. The Committee shall perform all of the duties of the Commission with respect to reviewing rules of administrative agencies except as provided in G.S. 120-30.25. (1977, c. 915, s. 1.)

§ 120-30.27. Meetings of Committee. — The Committee shall meet at least monthly at times and places specified by the chairman. The members of the Committee shall be compensated for attending meetings as provided in G.S. 120-30.18. Professional, clerical or other employees required by the Committee shall be provided in accordance with G.S. 120-32. (1977, c. 915, s. 1.)

§ 120-30.28. Review of rules. — (a) After a rule is filed with the Director, he shall submit it to the Committee, which may determine whether or not the agency acted within its statutory authority in promulgating the rule.

(b) If the Committee finds that an agency did not act within its statutory authority in promulgating a rule the Committee shall report that fact to the Director who shall transmit the report to the agency that made the rule. The report shall include a written statement of the Committee's objections and the reasons therefor.

(c) The Committee shall review a rule submitted to it by the Director within 60 days following the submission of the rule. (1977, c. 915, s. 1.)

§ 120-30.29. Objections of Committee. — The agency that filed a rule to which the Committee objects may amend the rule to remove the cause of the Committee's objections and return the rule to the Committee for further review. The agency may return the rule without change with the Committee's notation of objection attached. The agency shall return the rule with or without change within 60 days of the notification to the agency of the Committee's objection. When the rule to which the Committee has objected is returned without change, the rule and notation of objection shall be referred by the Director to the Commission. (1977, c. 915, s. 1.)

§ 120-30.30. Review of rule by Legislative Research Commission. — (a) The Commission may review the rule in the same manner as the Committee to determine whether or not the agency acted within its statutory authority in promulgating the rule.

(b) If the Commission determines that an agency did not act within its statutory authority in promulgating a rule, a written statement of its objections and statement of its reasons shall be attached to the rule, and the rule and objection and statement of reasons shall be forwarded to the Director, who shall transmit it to the rule-making agency.

(c) The Commission shall act on the rule submitted in accordance with G.S. 120-30.29 within 60 days after the rule was returned to the Committee by the rule-making agency. (1977, c. 915, s. 1.)

§ 120-30.31. Regulation objected to by Legislative Research Commission. — The agency may revise a rule to remove the cause of the objections of the Commission, and may return the revised rule to the Commission or it may return the rule without change with the Commission's objections attached. The agency shall return the rule with or without change within 30 days of the notification to the agency of the Commission's objections. (1977, c. 915, s. 1.)

§ 120-30.32. Reports of the Committee. — The Committee shall report monthly to the Commission on all actions taken on rules. (1977, c. 915, s. 1.)

§ 120-30.33. Legislative Research Commission recommendations. — All rules that have been reviewed by the Committee and the Commission shall remain in effect. If the agency returns the rule with the Committee or Commission objections attached without change, the Commission may submit a report to the next regular session of the General Assembly recommending legislative action. (1977, c. 915, s. 1.)

§ 120-30.34. Emergency rules. — Rules adopted in accordance with the procedures of G.S. 150A-13 may be reviewed by the Committee. The Committee, in addition to reviewing the rules, may review the reasons given in the agency finding of emergency. (1977, c. 915, s. 1.)

§ 120-30.35. Hearings. — (a) Notwithstanding the provisions of G.S. 120-30.23(c) and G.S. 120-30.25(c), the cochairmen of the Commission may call a public hearing on any rule upon the recommendation of the Committee or upon the motion of any member of the Commission.

(b) At least 15 days before the hearing, notice of the hearing shall be given to the rule-making agency and to such other persons that desire to be heard, that the cochairmen of the Commission consider to be persons that may be affected by the rule, or that may request copies of the notice.

(c) The provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee and the Commission. (1977, c. 915, s. 1.)

ARTICLE 7.

Legislative Services Commission.

§ 120-32. Commission duties. — The Legislative Services Commission is hereby authorized to:

(9) To establish a bill drafting division to draft bills at the request of members or committees of the General Assembly. (1969, c. 1184, s. 2; 1971, c. 685, s. 2; c. 1200, s. 8; 1977, c. 802, s. 50.60.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, added subdivision (9).

Session Laws 1977, c. 802, s. 53, contains a severability clause.

As the other subdivisions were not changed by the amendment, only the introductory language and subdivision (9) are set out.

§ 120-32.1. Use and maintenance of State Legislative Building.

(c) When the General Assembly is in regular or extra session, the Legislative Services Commission shall have exclusive authority to assign parking space in the State Legislative Building and upon its grounds, as "grounds" is defined in G.S. 120-32.3 [120-32.2], and the State Legislative Building security force shall have exclusive authority and responsibility for enforcing the parking rules and regulations of the Legislative Services Commission. The Legislative Services Commission may cause to be removed at the owner's expense any vehicle parked in the State Legislative Building or on its grounds in violation of the rules and regulations of the Legislative Services Commission, and during regular or extra sessions of the General Assembly may cause to be removed any vehicle parked in any State-owned parking space leased to an employee of the General Assembly where the vehicle is parked without the consent of the employee to whom the space is leased. (1973, c. 99, s. 1; 1975, c. 145, s. 3.)

Editor's Note. —

The 1975 amendment, effective April 18, 1975, added subsection (c).

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

§ 120-32.2. State Legislative Building special police.—All members of the State Legislative Building security force employed by the Legislative Services Office are special policemen, and within the State Legislative Building and upon its grounds they shall have all the powers of policemen of incorporated towns.

As used in this section, "grounds" means the area between the outer walls of the State Legislative Building and the near curbline of those sections of Jones, Wilmington, Lane and Salisbury Streets which border the land on which the State Legislative Building is situated. When the General Assembly is in regular or extra session, the term "grounds" also includes the surface to the far curbline of those sections of Jones, Wilmington, Lane and Salisbury Streets which border the land on which the State Legislative Building is situated and any State-owned parking lot which is leased to the General Assembly while the General Assembly is in session. (1975, c. 145, s. 1.)

Editor's Note. — Session Laws 1975, c. 145, s. 4, makes this section effective April 18, 1975.

§ 120-32.3. Oath of State Legislative Building special police. — Before exercising the duties of a special policeman, each State Legislative Building security officer shall take an oath before some officer empowered to administer oaths, and the oaths shall be filed with the Clerk of Superior Court of Wake County. The oath of office shall be as follows:

"State of North Carolina, Wake County.

"I, ..., do solemnly swear (or affirm) that I will well and truly execute the duties of special policeman in the State Legislative Building and upon its grounds according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all rules and regulations of the Legislative Services Commission concerning use of the State Legislative Building and its grounds. So help me, God.

"Sworn and subscribed to before me, this the . . . . . day of . . . . . ., A.D. . . . . ."

(1975, c. 145, s. 2.)

Editor's Note. — Session Laws 1975, c. 145, s. 4, makes this section effective April 18, 1975.

§ 120-32.4. Subpoena and contempt powers. — The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Legislative Services Commission as if it were a joint committee of the General Assembly. (1977, c. 344, s. 5.)

Editor's Note. — Session Laws 1977, c. 344, s. 6, makes this section effective Aug. 1, 1977.

ARTICLE 9.

Lobbying.

§§ 120-40 to 120-47: Recodified as §§ 120-47.1 to 120-47.10, effective Jan. 1, 1977.

Editor's Note. — This Article was rewritten by Session Laws 1975, c. 820, s. 2, effective Jan. 1, 1977, and has been recodified as Article 9A, § 120-47.1 et seq., of this Chapter.

ARTICLE 9A.

Lobbying.

§ 120-47.1. Definitions. — For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation" and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or anything of value and any contract, agreement, promise or other obligation whether or not legally enforceable.

(2) The term "legislative agent" shall mean any person who is employed or retained, with compensation, by another person to give facts or arguments to any member of the General Assembly during any regular or special session thereof upon or concerning any bill, resolution, amendment, report or claim pending or to be introduced. The term "legislative agent" shall include, but not be limited to, corporate officers and directors and other individuals who are full or part-time employees of other persons and whose duties or activities as legislative agents, as hereinbefore defined, are incidental to the principal purposes for which they are employed or retained. The reimbursement of actual personal travel and subsistence expenses reasonably necessary to communicate with a member or members of the General Assembly shall not be considered compensation for purposes of determining whether a person is a legislative agent under this subdivision.

(3) The term "person" means any individual, firm, partnership, committee, association, corporation or any other organization or group of persons. (1933, c. 11, s. 1; 1975, c. 820, s. 1.)

Editor's Note. — This Article is Article 9 of this Chapter as rewritten by Session Laws 1975, c. 820, s. 2, effective Jan. 1, 1977, and recodified. Where appropriate, the historical citations to sections in the former Article have been added to corresponding sections of the new Article.

Session Laws 1975, c. 820, s. 3, contains a severability clause.

§ 120-47.2. Registration procedure. — (a) In each General Assembly session and for each employer, or retainer, every person employed or retained as a legislative agent in this State shall, before engaging in any activities as a legislative agent, register with the Secretary of State.

(b) The form of such registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as legislative agent.

(c) Each legislative agent shall register again with the Secretary of State no later than 10 days after any change in the information supplied in his last registration under subsection (b). Such supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as a legislative agent and whom they represent. A supplemental list shall be furnished periodically each 20 days thereafter as the session progresses. (1933, c. 11, s. 2; 1973, c. 1451; 1975, c. 820, s. 1.)

§ 120-47.3. Registration fee. — Every person, corporation or association which employs any person to act as legislative agent as defined by law to promote or oppose in any manner the passage by the General Assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the State, or to act in any manner as a legislative agent in connection with any such legislation, shall pay to the Secretary of State a fee of fifty dollars ($50.00), which fee shall be due and payable by either the employer or the employee at the time of registration.

A separate registration, together with a separate registration fee of fifty dollars ($50.00), shall be required for each person, corporation or association for which a person acts as legislative agent. Fees so collected shall be deposited in the general fund of the State. (1975, c. 852, s. 1.)

Editor's Note. — Session Laws 1975, c. 852, s. 2, provides: "This act shall become effective on January 1, 1977, and shall apply to any person, corporation or association which employs a legislative agent at every session of the General Assembly convening on or after January 1, 1977."

§ 120-47.4. Written authority from employer to be filed; copy for legislative committee. — Each legislative agent shall file with the Secretary of State within 10 days after his registration a written authorization to act as such, signed by the person employing him. (1933, c. 11, s. 4; 1961, c. 1151; 1975, c. 820, s. 1.)

§ 120-47.5. Contingency lobbying fees and election influence prohibited. — (a) No person shall act as a legislative agent for compensation which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.

(b) No person shall attempt to influence the action of any member of the General Assembly by the promise of financial support of his candidacy, or by threat of financial contribution in opposition to his candidacy in any future election. (1933, c. 11, s. 3; 1975, c. 820, s. 1.)

§ 120-47.6. Statements of legislative agent's lobbying expenses required. — Each legislative agent shall file annually, within 30 days after the final adjournment of the regular session of the General Assembly held in a calendar year, a report with respect to each person represented setting forth the date, to whom paid, and amount of each expenditure made during the previous year in connection with promoting or opposing any legislation in any manner covered by this Article, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures in a particular category if the total amount expended in the particular category on behalf of a person represented is twenty-five dollars ($25.00) or less. A report shall be filed annually whether or not contributions or expenditures are made. All reports shall be in such form as shall be prescribed by the Secretary of State and shall be open to public inspection. When a legislative agent fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the agent of his delinquency and the penalties provided by law. Within 20 days of the receipt of such letter, the agent shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ($10.00). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one

of the manners prescribed herein shall result in revocation of any and all registrations of a legislative agent under this Article. No legislative agent may register or reregister under this Article until he has fully complied with this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1.)

§ 120-47.7. Statements of employer lobbying expenses required. — Each person who employs or retains a legislative agent shall file annually, within 30 days after the final adjournment of the regular session of the General Assembly held in a calendar year, a report with respect to each agent employed or retained setting forth the date, to whom paid, and amount of each expenditure made during the previous year in connection with promoting or opposing any legislation in any manner covered by this Article, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to legislative agents. It shall not be necessary to report expenditures in any particular category if the total amount expended in the particular category on behalf of a person represented is twenty-five dollars ($25.00) or less. In the category of compensation to legislative agents it shall not be necessary to report the full salary, or any portion thereof, of a legislative agent who is a full-time employee of or is annually retained by the reporting employer. A report shall be filed annually whether or not payments are made. All reports shall be in the form prescribed by the Secretary of State and open to public inspection. When an employer or retainer of a legislative agent fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the employer or retainer of his delinquency and the penalties provided by law. Within 20 days of the receipt of such letter, the employer or retainer shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ($10.00). Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1.)

§ 120-47.8. Persons exempted from provisions of Article. — The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as a legislative agent, solely engaged in expressing a personal opinion on legislative matters to his own legislative delegation or other members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative agent in connection with that or any other legislative matter.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to his office and public duties.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients as to the construction and effect of proposed or pending legislation where such professional services are not otherwise, directly or indirectly, connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of such news medium.

(6) Notwithstanding the persons exempted in this section, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison

personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended in influencing or attempting to influence legislation, other than the salaries of regular full-time employees.

(7) Members of the General Assembly.

(8) A person responding to inquiries from a member of the General Assembly, and who engages in no further activities as a legislative agent in connection with that or any other legislative matter.

(9) An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only. (1933, c. 11, s. 7; 1975, c. 820, s. 1; 1977, c. 697.)

Editor's Note. — The 1977 amendment added subdivisions (8) and (9).

§ 120-47.9. Punishment for violation. — Whoever willfully violates any provision of this Article shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or imprisoned not exceeding two years, or both. In addition, no legislative agent who is convicted of a violation of the provisions of this Article shall in any way act as a legislative agent for a period of two years following his conviction. (1933, c. 11, s. 8; 1975, c. 820, s. 1.)

§ 120-47.10. Enforcement of Article by Attorney General. — The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to him of violations of this Article, make an appropriate investigation thereof, and he shall forward a copy of the investigation to the district attorney of the judicial district of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article. (1975, c. 820, s. 1.)

ARTICLE 12.

Commission on Children with Special Needs.

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

§ 120-59. Time of appointments; terms of office. — Appointments to the Commission shall be made within 15 days subsequent to the close of each regular session of the General Assembly. The term of office shall begin on the day of appointment, and shall end on the date when the next appointments are made. Vacancies occurring during a term shall be filled for the unexpired term by the officer who made the original appointment. (1973, c. 1422.)

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

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

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

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

(1) Pursue an in-depth study of the services provided by other states for children with special needs.

(2) Collect and evaluate for comprehensiveness existing legislation in North Carolina which is relevant to programs for children with special needs; as well as pertinent reports, studies and findings from other states and national bodies.

(3) Collect and evaluate for comprehensiveness the reports and recommendations of the various agencies, councils, commissions, committees, and associations existing in North Carolina whose primary or partial duties are to make recommendations designed to affect services for children with special needs.

(4) Monitor on a continuing basis the progress of the State as it moves toward meeting the service requirements for children with special needs. (1973, c. 1422.)

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

(1) A comparison of services provided by the State with those services provided by other states.

(2) Legislation designed to strengthen the role of the State in meeting its responsibilities to children with special needs.

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

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

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

§§ 120-66 to 120-70: Reserved for future codification purposes.

ARTICLE 13.

"Joint" Legislative Commission on Governmental Operations.

§ 120-71. Purpose. — The rapid increase in the functions and costs of State government and the complexity of agency operations deeply concern the General Assembly. Members of the General Assembly have the ultimate responsibility for making public policy decisions and deciding on appropriations of public moneys. Knowledge of the public service needs being met, having evidence as to whether previous policy and appropriations have resulted in expected program benefits, and data on how State government reorganization has affected agency operations are most important.

Legislative examination and review of public policies, expenditures and reorganization implementation as an integral part of legislative duties and responsibilities should be strengthened. For the purpose of performing such continuing examination and evaluation of State agencies, [and] their actual effectiveness in programming and in carrying out procedures under reorganization, the General Assembly herein provides for the continuing review of operations of State government. (1975, c. 490.)

§ 120-72. Definition. — For the purposes of this Article, "program evaluation" is defined as: an examination of the organization, programs, and administration of State government to ascertain whether such functions (i) are effective, (ii) continue to serve their intended purposes, (iii) are efficient, and (iv) require modification or elimination. (1975, c. 490.)

§ 120-73. Commission established. — There is hereby established the Joint Legislative Commission on Governmental Operations, hereinafter called the Commission, which shall conduct evaluative studies of the programs, policies, practices and procedures of the various departments, agencies, and institutions of State government. (1975, c. 490.)

§ 120-74. Appointment of members; terms of office. — The Commission shall consist of 13 members. The President of the Senate, the President pro tempore of the Senate, the Speaker pro tempore of the House, and the Assistant Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint four members from the House. The President pro tempore of the Senate shall appoint four members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered years, except that initial appointments shall begin on July 1, 1975. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission. The terms of the initial members of the Commission shall expire January 15, 1977. (1975, c. 490; 1977, c. 988, s. 1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section. Session Laws 1977, c. 988, s. 4, provides: "Notwithstanding the previous provisions of

G.S. 120-74, the terms of any Commission members appointed by the President of the Senate shall terminate on July 1, 1977. The President pro tempore of the Senate shall make his initial appointments to the Commission on or after July 1, 1977, and the terms of members so appointed shall end on January 15, 1979."

§ 120-75. Organization of the Commission. — The President of the Senate shall serve as chairman of the Commission. The Speaker of the House or his designee shall serve as vice-chairman of the Commission for a term of one year, beginning on July 1 of each year. (1975, c. 490; 1977, c. 988, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section.

§ 120-76. Powers and duties of the Commission. — The Commission shall have the following powers:

(1) To conduct program evaluation studies of the various components of State agency activity as they relate to:
   a. Service benefits of each program relative to expenditures;
   b. Achievement of program goals;
   c. Use of indicators by which the success or failure of a program may be gauged; and
   d. Conformity with legislative intent.

(2) To study legislation which would result in new programs with statewide implications for feasibility and need. These studies may be jointly conducted with the Fiscal Research Division of the Legislative Services Commission.

(3) To study on a continuing basis the implementation of State government reorganization with respect to:
   a. Improvements in administrative structure, practices and procedures;
   b. The relative effectiveness of centralization and decentralization of management decisions for agency operation;
   c. Opportunities for effective citizen participation; and
   d. Broadening of career opportunities for professional staff.

(4) To make such studies and reports of the operations and functions of State government as it deems appropriate or upon petition by resolution of either the Senate or the House of Representatives.

(5) To produce routine written reports of findings for general legislative and public distribution. Special attention shall be given to the presentation of findings to the appropriate committees of the Senate and the House of Representatives. If findings arrived at during a study have a potential impact on either the finance or appropriations deliberations, such findings shall immediately be presented to the committees. Such reports shall contain recommendations for appropriate executive action and when legislation is considered necessary to effect change, draft legislation for that purpose may be included. Such reports as are submitted shall include but not be limited to the following matters:
   a. Ways in which the agencies may operate more economically and efficiently;
   b. Ways in which agencies can provide better services to the State and to the people; and
   c. Areas in which functions of State agencies are duplicative, overlapping, or failing to accomplish legislative objectives, or for any other reason should be redefined or redistributed.

(6) To devise a system, in cooperation with the Fiscal Research Division of the Legislative Services Commission, whereby all new programs authorized by the General Assembly incorporate an evaluation

component. The results of such evaluations may be made to the Appropriations Committees at the beginning of each regular session. (1975, c. 490.)

§ 120-77. Additional powers. — The Commission, while in the discharge of official duties, shall have access to any paper or document, and may compel the attendance of any State official or employee before the Commission or secure any evidence under the provisions of G.S. 120-19. In addition, the provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly. (1975, c. 490; 1977, c. 344, s. 1.)

Editor's Note. — The 1977 amendment, effective Aug. 1, 1977, added the second sentence.

§ 120-78. Compensation and expenses of Commission members. — Members of the Commission, who are also members of the General Assembly, shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1 for General Assembly members. The President of the Senate shall receive subsistence and travel expenses at the rates set forth in G.S. 138-6. The Commission shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. (1975, c. 490; 1977, c. 988, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, inserted "who are also members of the General Assembly" in the first sentence, substituted "travel expenses" for "travel allowances" in the first sentence, and rewrote the second sentence.

§ 120-79. Commission staffing. — (a) The Commission shall use available secretarial employees of the General Assembly, or may employ, and may remove, such professional and clerical employees as the Commission deems proper. The chairman may assign and direct the activities of the employees of the Commission, subject to the advice of the Commission.

(b) The employees of the Commission shall receive salaries that shall be fixed by the Legislative Services Commission and shall receive travel and subsistence allowances fixed by G.S. 138-6 and 138-7 when such travel is approved by the chairman, subject to the advice of the Commission. The employees of the Commission shall not be subject to the Executive Budget Act or to the State Personnel Act.

(c) The Commission may use employees of the Fiscal Research Division of the Legislative Services Commission.

(d) The Commission shall assure that sufficient funds are available within its appropriations before employing professional and clerical employees. (1975, c. 490.)

§§ 120-80 to 120-84: Reserved for future codification purposes.

ARTICLE 14.

Legislative Ethics Act.

Part 1. Code of Legislative Ethics.

§ 120-85. Definitions. — As used in this Article:

(1) "Business with which he is associated" means any enterprise, incorporated or otherwise, doing business in the State of which the legislator or any member of his immediate household is a director, officer, owner, partner, employee, or of which the legislator and his immediate household, either singularly or collectively, is a holder of securities worth five thousand dollars ($5,000) or more at fair market value as of December 31 of the preceding year, or constituting five percent (5%) or more of the outstanding stock of such enterprise.

(2) "Immediate household" means the legislator, his spouse, and all dependent children of the legislator.

(3) "Vested trust" as set forth in G.S. 120-96(4) means any trust, annuity or other funds held by a trustee or other third party for the benefit of the member or a member of his immediate household. (1975, c. 564, s. 1.)

Editor's Note. — Session Laws 1975, c. 564, s. 3, makes the act effective Dec. 1, 1975.

§ 120-86. Bribery, etc. — No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which he is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that such legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of his duties. (1975, c. 564, s. 1.)

§ 120-87. Disclosure of confidential information. — No legislator shall use or disclose confidential information gained in the course of or by reason of his official position or activities in any way that could result in financial gain for himself, a business with which he is associated or a member of his immediate household or any other person. (1975, c. 564, s. 1.)

§ 120-88. When legislator to disqualify himself or submit question to Legislative Ethics Committee. — When a legislator must act on a legislative matter as to which he has an economic interest, personal, family, or client, he shall consider whether his judgment will be substantially influenced by the interest, and consider the need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the legislature. If after considering these factors the legislator concludes that an actual economic interest does exist which would impair his independence of judgment, then he shall not take any action to further the economic interest, and shall ask that he be excused, if necessary, by the presiding officer in accordance with the rules of the respective body. If the legislator has a material doubt as to whether he should act, he may submit the question to the Legislative Ethics Committee for an advisory opinion in accordance with G.S. 120-104. (1975, c. 564, s. 1.)

Part 2. Statement of Economic Interest.

§ 120-89. Statement of economic interest by legislative candidates; filing required. — Every person who files as a candidate for nomination or election to a seat in either house of the General Assembly shall file a statement of economic interest as specified in this Article within 10 days of the filing deadline for the office he seeks. (1975, c. 564, s. 1.)

§ 120-90. Place and manner of filing. — The statement of economic interest shall cover the preceding calendar year and shall be filed at the same place, and in the same manner, as the notice of candidacy which a candidate seeking party nomination for the office of State Senator or member of the State House of Representatives is required to file under the provisions of G.S. 163-106. (1975, c. 564, s. 1.)

§ 120-91. Certification of statements of economic interest. — The chairman of the county board of elections with which a statement of economic interest is filed shall forward a certified copy of the statement to the State Board of Elections and the offices to which copies of the notice of candidacy filed by a candidate seeking party nomination for the office of State Senator or member of the State House of Representatives is required to be forwarded under the provisions of G.S. 163-108. (1975, c. 564, s. 1.)

§ 120-92. Filing by candidates not nominated in primary elections. — A person who is nominated pursuant to the provisions of G.S. 163-114 after the primary and before the general election, and a person who qualifies pursuant to the provisions of G.S. 163-122 as an independent candidate in a general election shall file with the county board of elections of each county in the senatorial or representative district a statement of economic interest. A person nominated pursuant to G.S. 163-114 shall file the statement within three days following his nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an independent candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed pursuant to that section. A person elected pursuant to G.S. 163-11 (vacancy in office) shall file a statement of economic interest within 10 days after taking the oath of office. (1975, c. 564, s. 1.)

§ 120-93. County boards of elections to notify candidates of economic-interest-statement requirements. — Each county board of elections shall provide for notification of the economic-interest-statement requirements of G.S. 120-95 and 120-96 to be given to any candidate filing for nomination or election to the General Assembly at the time of his or her filing in the particular county. (1975, c. 564, s. 1.)

§ 120-94. Statements of economic interest are public records. — The statements of economic interest are public records and shall be made available for inspection and copying by any person during normal business hours at the office of the various county boards of election where the statements or copies thereof are filed. If a county board of elections of a county does not keep an office open during normal business hours each day, that board shall deliver a copy of all statements of economic interest filed with it to the clerk of superior court of the county, and the statements shall be available for inspection and copying by any person during normal business hours at that clerk's office. (1975, c. 564, s. 1.)

§ 120-95. Legislators to file statement of economic interest with Legislative Services Office. — Every member of the General Assembly, however selected, shall by January 15 next following his election file a statement of economic interest with the Legislative Services Officer of the General Assembly. A copy of the statement so filed shall be placed in the Legislative Library and shall be available for inspection and copying by any person during normal library hours. On or before December 16 of the year members of the General Assembly are elected, the Legislative Services Officer shall cause notice of the filing requirement of this section to be mailed to all elected members of the General Assembly. (1975, c. 564, s. 1.)

§ 120-96. Contents of statement. — Any statement of economic interest filed under this Article shall be on a form prescribed by the Committee, and the person filing the statement shall supply the following information:

(1) The identity, by name, of any business with which he, or any member of his immediate household, is associated;

(2) The character and location of all real estate of a fair market value in excess of five thousand dollars ($5,000), other than his personal residence (curtilage), in the State in which he, or a member of his immediate household, has any beneficial interest, including an option to buy and a lease for 10 years or over;

(3) The type of each creditor to whom he, or a member of his immediate household, owes money, except indebtedness secured by lien upon his personal residence only, in excess of five thousand dollars ($5,000);

(4) The name of each "vested trust" in which he or a member of his immediate household has a financial interest in excess of five thousand dollars ($5,000) and the nature of such interest;

(5) The name and nature of his and his immediate household member's respective business or profession or employer and the types of customers and types of clientele served;

(6) A list of businesses with which he is associated that do business with the State, and a brief description of the nature of such business;

(7) In the case of professional persons and associations, a list of classifications of business clients which classes were charged or paid two thousand five hundred dollars ($2,500) or more during the previous calendar year for professional services rendered by him, his firm or partnership. This list need not include the name of the client but shall list the type of the business of each such client or class of client, and brief description of the nature of the services rendered. (1975, c. 564, s. 1.)

§ 120-97. Updating statements. — Each person who is required to file a statement of economic interest under this Article shall file an updated statement at the office required by this Article by January 15 of the second year following his or her election on a form prescribed by the Legislative Ethics Committee. The Committee shall forward the form to those required to file same on or before December 16. (1975, c. 564, s. 1.)

§ 120-98. Penalty for failure to file. — (a) In the case of a candidate, if the statement of economic interest required by this Article is not filed when required herein, the county board of elections shall immediately notify the candidate that his name will not be placed on the ballot unless the statement is received within 15 days. If the statement is not received within 15 days, the candidate shall be disqualified and his filing fee returned.

(b) In the case of a member, willful failure to file shall result in that member's not being allowed to take the oath of office or enter or continue upon his duties

or receive any compensation from public funds provided, however, the Committee may, for good cause shown, allow said member to file the required statement and remove his disability. (1975, c. 564, s. 1.)

Part 3. Legislative Ethics Committee.

§ 120-99. Creation; composition. — The Legislative Ethics Committee is created to consist of a chairman and eight members, four Senators appointed by the President of the Senate, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and four members of the House of Representatives appointed by the Speaker of the House, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

The President of the Senate shall designate a member of the General Assembly as chairman of the Committee in odd-numbered years, and the Speaker of the House shall designate a member of the General Assembly as chairman of the Committee in even-numbered years. The chairman will vote only in the event of a tie vote. (1975, c. 564, s. 1.)

§ 120-100. Term of office; vacancies. — Initial members of the Legislative Ethics Committee shall be appointed as soon as practicable after the ratification of this Article and shall serve until the expiration of their current terms as members of the General Assembly. Thereafter, appointments shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly. The chairman shall serve for one year and shall be appointed each year. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy. (1975, c. 564, s. 1.)

Editor's Note. — The 1975 act adding this Article was ratified June 12, 1975, and made effective Dec. 1, 1975.

§ 120-101. Quorum; expenses of members. — Five members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

The chairman and members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties. (1975, c. 564, s. 1.)

§ 120-102. Powers and duties of Committee. — In addition to the other powers and duties specified in this Article, the Committee has the following powers and duties:

(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.

(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public

inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.

(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.

(5) To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) To advise General Assembly committees, at the request of a committee chairman, or at the request of three members of a committee, about possible points of conflict and suggested standards of conduct of committee members in the consideration of specific bills or groups of bills.

(7) To suggest to legislators activities which should be avoided. (1975, c. 564, s. 1.)

§ 120-103. Possible violations; procedures; disposition. — (a) Institution of Proceedings. — On its own motion, or in response to signed and sworn complaint of any individual filed with the Committee, the Committee shall inquire into any alleged violation of any provision of this Article.

(b) Notice and Hearing. — If, after such preliminary investigation as it may make, the Committee determines to proceed with an inquiry into the conduct of any individual, the Committee shall notify the individual as to the fact of the inquiry and the charges against him and shall schedule one or more hearings on the matter. The individual shall have the right to present evidence, cross-examine witnesses, and be represented by counsel at any hearings. The Committee may, in its discretion, hold hearings in closed session; however, the individual whose conduct is under inquiry may, by written demand filed with the Committee, require that all hearings before the Committee concerning him be public or in closed session.

(c) Subpoenas. — The Committee may issue subpoenas to compel the attendance of witnesses or the production of documents, books or other records. The Committee may apply to the superior court to compel obedience to the subpoenas of the Committee. Notwithstanding any other provision of law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties.

(d) Disposition of Cases. — When the Committee has concluded its inquiries into alleged violations, the Committee may dispose of the matter in one of the following ways:

(1) The Committee may dismiss the complaint and take no further action. In such case the Committee shall retain its records and findings in confidence unless the individual under inquiry requests in writing that the records and findings be made public.

(2) The Committee may, if it finds substantial evidence that a criminal statute has been violated, refer the matter to the Attorney General for possible prosecution through appropriate channels.

(3) The Committee may refer the matter to the appropriate House of the General Assembly for appropriate action. That House may, if it finds the member guilty of unethical conduct as defined in this Article, censure, suspend or expel the member. (1975, c. 564, s. 1.)

§ 120-104. Advisory opinions. — At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee. (1975, c. 564, s. 1.)

§ 120-105. Continuing study of ethical questions. — The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as sections to cover the administrative branch of government and shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government. (1975, c. 564, s. 1.)

§ 120-106. Article applicable to presiding officers. — The provisions of this Article shall apply to the presiding officers of the General Assembly. (1975, c. 564, s. 2.)

§§ 120-107 to 120-111: Reserved for future codification purposes.

ARTICLE 15.

Retirement Systems Actuarial Note Act.

§ 120-112. Title. — This Article may be cited as the "Retirement Systems Actuarial Note Act." (1977, c. 503, s. 1.)

Editor's Note. — Session Laws 1977, c. 503, s. 4, contains a severability clause.

Session Laws 1977, c. 503, s. 6, provides: "This act shall become effective upon ratification but shall apply only to legislation and amendments introduced after August 1, 1977."

§ 120-113. Duties and functions of Fiscal Research Division. — (a) The Fiscal Research Division of the Legislative Services Commission of the General Assembly shall have authority to evaluate on a continuing basis all aspects of any State, municipal, or other retirement system, funded in whole or in part out of public funds, as to actuarial soundness. The Fiscal Research Division shall make periodic detailed reports both to the General Assembly and the Governor specifically setting forth the findings of such evaluations. In conducting its evaluations the division shall have complete access to all books and accounts of the retirement systems.

(b) No provision of this Article shall be deemed or in any way construed to preclude the authority of any retirement system funded in whole or in part out of public funds to hire an actuary for any such retirement system.

(c) The Fiscal Research Division shall, in addition to the powers and functions conferred by this Article, render such assistance as the Legislative Services Commission may require with respect to any other matter requiring actuarial evaluations. (1977, c. 503, s. 2.)

§ 120-114. Actuarial notes. — (a) Every bill, joint resolution, and simple or concurrent resolution introduced in the General Assembly proposing any change in the law relative to any State, municipal, or other retirement system, funded in whole or in part out of public funds, shall have attached to it at the time of

its consideration by any committee of either house of the General Assembly a brief explanatory statement or note which shall include a reliable estimate of the financial and actuarial effect of the proposed change in any such retirement system. This actuarial note shall be attached to the original of each proposed bill or resolution which is reported favorably by any committee of either house of the General Assembly, but shall be separate therefrom, shall be clearly designated as an actuarial note and shall not constitute a part of the law or other provisions or expression of legislative intent proposed by the bill or resolution.

(b) The author of each bill or resolution shall present a copy of the bill or resolution, with his request for an actuarial note, to the Fiscal Research Division which shall have the duty to prepare said actuarial note as promptly as possible. Actuarial notes shall be prepared in the order of receipt of request for such notes but shall be transmitted to the author or authors of the measure in quintuplicate no later than two weeks after the request for the actuarial note is made. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both.

(c) The author of each bill or resolution shall also present a copy of the bill or resolution to any actuary employed by the retirement system affected by the bill or resolution in question. Such actuary shall prepare an actuarial note and transmit it to the author or authors of the measure in quintuplicate no later than two weeks after the request for the actuarial note is received. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both.

(d) The note shall be factual and shall, if possible, provide a reliable estimate of both the immediate effect and, if determinable or reasonably foreseeable, the long range fiscal and actuarial effect of the measure. If, after careful investigation, it is determined that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the actuarial note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(e) At any time any committee of either house reports any legislative instrument, to which an actuarial note or notes are attached at the time of committee consideration, with any amendment of such nature as would substantially affect the cost to or the revenues of any retirement system as stated in the actuarial note or notes attached to the measure at the time of such consideration, it shall be the responsibility of the chairman of the committee reporting such instrument to obtain from the Fiscal Research Division an actuarial note of the fiscal and actuarial effect of the change proposed by the amendment reported. Such actuarial note shall be attached to the report of the committee on the measure as a supplement thereto. A floor amendment to a bill or resolution to which an actuarial note was attached at the time of committee consideration of the bill or resolution shall not be in order, if the amendment affects the costs to or the revenues of a retirement system, unless the amendment is accompanied by an actuarial note, prepared by the Fiscal Research Division, as to the actuarial effect of the amendment. (1977, c. 503, s. 3.)

Chapter 121.

Archives and History.

ARTICLE 1.

General Provisions.

§ 121-1. Short title.

Editor's Note. — For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

§ 121-4. Powers and duties of the Department of Cultural Resources. — The Department of Cultural Resources shall have the following powers and duties:

(7) To select suitable sites on property owned by the State of North Carolina, or any subdivision of the State, for the erection of historical markers calling attention to nearby historic sites and prepare appropriate inscriptions to be placed on such markers. The Department shall have all markers manufactured, and when completed, each marker shall be delivered to the Department of Transportation for payment and erection under the provisions of G.S. 136-42.2 and 136-42.3. The Secretary is authorized to appoint a highway historical marker advisory committee to approve all proposed highway historical markers and to establish criteria for carrying out this responsibility.

(1977, c. 464, s. 38.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, deleted "and Highway Safety" following "Transportation" in the second sentence of subdivision (7).

As the other subdivisions were not changed by the amendment, only the introductory language and subdivision (7) are set out.

§ 121-5. Public records and archives.

Cross References. — As to mutilation or defacement of records and papers in the North Carolina State Archives, see § 14-76.1. As to larceny of records or papers in the custody of the North Carolina State Archives, see § 14-72.

Applied in State v. West, 31 N.C. App. 431, 229 S.E.2d 826 (1976).

§ 121-8. Historic preservation program.

Editor's Note. — For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

§ 121-9. Historic properties.

Editor's Note. — For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

§ 121-11. Procedures where assistance extended to cities, counties, and other agencies or individuals.

Editor's Note. — For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

§ 121-12. North Carolina Historical Commission.

(d) Commission to Furnish Recommendations to Legislative Committees. — The Commission through the Department of Cultural Resources shall furnish as soon as practicable to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds for the purpose of acquiring, preserving, restoring, or operating, or otherwise assisting, any property having historic, archeological, architectural, or other cultural value or significance, at least five copies of a report on the findings and recommendations of the Commission relating to such property. (1973, c. 476, s. 48; 1975, c. 19, s. 40.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "an" for "as" preceding "appropriation of State funds" in subsection (d).

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

For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

§ 121-12.1. Grants-in-aid. — Under the concepts of reorganization of State government, responsibility for administering appropriations for grants-in-aid by the State to private nonprofit organizations in the areas of history, art, and culture is hereby assigned to the Department of Cultural Resources. It shall be the responsibility of the Department of Cultural Resources to receive, analyze, and recommend to the Governor, the Advisory Budget Commission, and the General Assembly the disposition of any request for funding by or for any of these organizations, and to disburse under provisions of law any appropriations made to them. Appropriations for grants-in-aid to assist in the restoration of historic sites owned by private nonprofit organizations shall in addition be expended only in accordance with G.S. 121-11, 121-12 and 143-31.2. (1977, c. 802, s. 47.)

Editor's Note. — Session Laws 1977, c. 802, s. 54, makes this section effective July 1, 1977.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 121-12.2. Procedures for preparing budget requests and expending appropriations for grants-in-aid. — Requests for funding shall be submitted by these organizations to the Department of Cultural Resources. If received by any other department of State government they shall be forwarded to the

Department of Cultural Resources. All such requests shall be subjected to the process described in G.S. 121-12.1 and included in the Department's biennial budget request submitted in compliance with the Executive Budget Act.

The Department of Cultural Resources shall notify on a timely basis and in appropriate detail all those recipients of continuing appropriations as grants-in-aid of the requirements for submission of requests for appropriations for the ensuing fiscal period.

The Secretary of Cultural Resources is empowered and directed, in discharging the responsibilities herein assigned, to make regular and timely reviews, studies and recommendations concerning the operations and needs of these organizations for State funds, and to request from the applicants for grants and the recipients of grants, operating statements, audit reports and other information deemed appropriate. (1977, c. 802, s. 47.)

Editor's Note. — Session Laws 1977, c. 802, s. 54, makes this section effective July 1, 1977. Session Laws 1977, c. 802, s. 53, contains a severability clause.

ARTICLE 2.

Tryon's Palace and Tryon's Palace Commission.

§ 121-20. Commission to receive and expend funds donated or made available for restoration of Tryon's Palace. — In addition to exercising the powers and duties imposed upon the Tryon Palace Commission by Chapter 791 of the Session Laws of 1945 and Chapter 233 of the Session Laws of 1949, the Tryon Palace Commission is hereby fully authorized and empowered to receive and expend and disburse, for the restoration of the said Tryon's Palace, all such funds and property which were 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 Cultural Resources and the State Treasurer, annual or ad interim detailed reports of moneys and/or securities received, exchanged or converted into cash. Checks issued against such funds shall be countersigned by the chairman of Tryon Palace Commission, or by one duly authorized by the said Commission.

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

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

The Tryon Palace Commission is hereby authorized and empowered to expend the funds hereinbefore referred to and it may disburse said funds through the Department of Cultural Resources in the event it is found more practical to do so, and said Commission shall cooperate with the Department of Cultural Resources of the State of North Carolina in the expenditure of the funds for the restoration of said Tryon's Palace provided by two trust funds created by Maude Moore Latham in her lifetime, which funds shall be expended in accordance with the terms and provisions of said trusts for the purposes therein set out. (1953, c. 1100; 1973, c. 1262, s. 86; 1975, c. 387.)

Editor's Note. —
The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

The 1975 amendment substituted "Department of Cultural Resources" for "Department of Natural and Economic Resources" in three places.

ARTICLE 3.

Salvage of Abandoned Shipwrecks and Other Underwater Archeological Sites.

§ 121-22. Title to bottoms of certain waters and shipwrecks, etc., thereon declared to be in State.

Legislative Intent. — An examination of the face of the statute and its legislative history reveal the manifest intent of the legislature to vest title in the State of all archeological artifacts recovered from navigable waters. Nowhere does it appear that the legislature intended to limit the coverage of this section to artifacts associated with shipwrecks. State v. Armistead, 19 N.C. App. 704, 200 S.E.2d 226 (1973), appeal dismissed, 284 N.C. 617, 201 S.E.2d 690 (1974).

A cannon rolled off a bluff into the river by the Confederate Army in 1865 is an archeological artifact within the meaning of this section. State v. Armistead, 19 N.C. App. 704, 200 S.E.2d 226 (1973), appeal dismissed, 284 N.C. 617, 201 S.E.2d 690 (1974).

§ 121-26. Funds received by Department under § 121-25. — Any funds which may be paid to or received by the Department of Cultural Resources under the terms of G.S. 121-25 hereof may be allocated for use by the Department of Cultural Resources for continuing its duties under this Article, subject to the approval of the Department of Administration. (1967, c. 533, s. 5; 1973, c. 476, s. 48; 1975, c. 879, s. 46.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, deleted "the Budget Division of" preceding "the Department of Administration" at the end of the section.

Chapter 122.

Hospitals for the Mentally Disordered.

Article 1.

Organization and Management.

Article 2.

Officers and Employees.

Article 2A.

Local Mental Health Clinics.

Article 2B.

Rehabilitation of Alcoholics.

Article 2C.

Establishment of Area Mental Health Programs.

Article 2D.

Community Drug Abuse Programs.

Article 2E.

Licensing of Local Mental Health Facilities.

Article 2F.

Area Mental Health Programs.

Part 1. Policy Statement; Definitions.

Part 2. Authorization of Area Mental Health Services.

Part 3. Responsibilities of Area Mental Health Authorities.

ARTICLE 1.

Organization and Management.

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

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

§ 122-1.2. 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 Department of Human Resources, to be carried out pursuant to the rules and regulations of the Commission for Mental Health and Mental Retardation Services. 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, [and] State Department of Public Instruction, in rehabilitation services for mentally retarded persons through education and training programs.

(4) The Department shall coordinate 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 Human Resources 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; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Cross Reference. — As to duties of Department relative to cost allocation plan applicable to public health or mental health grants from federal government, see § 130-9.4.

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first sentence of the introductory paragraph.

§ 122-3. Authority of Commission for Mental Health and Mental Retardation Services and Department of Human Resources as to admission of patients; how commitments made. — The Commission for Mental Health and Mental Retardation Services shall have the authority to establish rules and regulations not contrary to law governing the admission of persons to any state-owned mental hospital or to other institutions established in accordance with this Chapter. 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 Department of Human Resources 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 feebleminded persons and to feebleminded persons held in any colonies providing that G.S. 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; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" near the beginning of the first paragraph.

§ 122-4. Designation of regions for the several State institutions for mentally disordered persons. — It shall be the the duty of the Commission for Mental Health and Mental Retardation Services to designate regions for any State hospitals or institutions now or hereafter established for the admission of mentally disordered persons of the State, with authority to change said regions when deemed necessary. The Department of Human Resources shall notify the clerks of superior court of the counties of the regions designated and of any change of these regions. (C. S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 6; 1959, c. 1028, ss. 1, 3; 1963, c. 1166, s. 10; 1965, c. 800, s. 1; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first sentence.

§ 122-7.1. Other mental health facilities for treatment of alcoholism; State alcoholic rehabilitation program; community alcoholism programs. — (a) The Department of Human Resources 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. The Commission for Mental Health and Mental Retardation Services 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

Department of Human Resources may itself operate such facilities directly, or in cooperation with the State Board of Alcoholic Control, or may delegate such operation. The Department of Human Resources shall act in an advisory capacity in the operation of these facilities.

(1975, c. 19, s. 41; 1977, c. 679, s. 7.)

Editor's Note. —

The 1975 amendment corrected an omission in the 1973 amendatory act by adding "The" preceding "Commission" at the beginning of the second sentence of subsection (a).

The 1977 amendment, effective July 1, 1977, substituted "Commission for Mental Health and Mental Retardation Services" for "Commission" in the second sentence of subsection (a).

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

§ 122-7.2. Establishment and operation of Western Carolina Training School; change of name. — Subject to the availability of funds, the Department of Human Resources 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 Department of Human Resources 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 Commission for Mental Health and Mental Retardation Services is authorized to establish rules and regulations for the admission, care, and treatment of such persons. However, the Department shall be authorized to determine costs and to set rates for the maintenance of these persons. The Department of Human Resources may itself operate such facilities directly or may delegate such operation. The Department of Human Resources shall act in an advisory capacity in the operation of these facilities. (1959, c. 1008; 1961, c. 513; 1963, c. 1166, ss. 2, 10; 1969, c. 982; 1973, c. 476, ss. 128, 133, 138; 1977, c. 679, s. 7.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Commission for Mental Health and Mental Retardation Services" for "Commission" in the third sentence.

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

(b) Notwithstanding the provisions of subsection (a), certified copies of written results of examinations by qualified physicians and medical records in the cases of mentally ill and inebriate respondents committed or facing commitment proceedings under Article 5A of this Chapter shall be furnished through the appropriate clerk's office to the respondent's counsel, and to the court and the district attorney in hearings and rehearings conducted pursuant to Article 5A. Except as to matters pertaining to the commitment under review, the

confidentiality of the physician-patient relationship shall be preserved. (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2.)

Editor's Note. — The third 1973 amendment, ratified April 12, 1974, and made effective 60 days after ratification, designated the former provisions of the section as subsection (a) and added subsection (b).

Information May Be Submitted, etc. — The citation to the opinion of the Attorney General under this catchline in the bound volume should be "42 N.C.A.G. 206 (1973)". — Ed. note.

§ 122-12. Bylaws and regulations. — The Commission for Mental Health and Mental Retardation Services 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; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services."

§ 122-13. Transfer of patients from one hospital to another; transfer of funds. — The North Carolina State Commission for Mental Health and Mental Retardation Services 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 the control of the Department of Human Resources to another State hospital or institution under its control. The Department of Human Resources is further authorized and empowered to transfer from one State hospital to another for the mentally disordered any funds appropriated for permanent improvement or maintenance, in the discretion of the Secretary. (1919, c. 330; C. S., s. 6163; 1947, c. 537, s. 9; 1963, c. 1166, s. 12; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first sentence.

§ 122-16. Department may make ordinances; penalties for violation.

Stated in Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

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

(b) Authority is hereby conferred upon the Commission for Mental Health and Mental Retardation Services to make such additional rules and regulations and

adopt such additional ordinances, not inconsistent with the provisions of Chapter 20, General Statutes of North Carolina, as in its opinion may be necessary, with respect to the use of the streets, alleys, roads and driveways of facilities of the Department of Human Resources, and to establish parking areas on the grounds of such institutions. Provided, however, that, based upon a traffic and engineering investigation, the Department of Human Resources may determine and fix speed limits on streets, roads and highways subject to such rules, regulations and ordinances lower than those provided in G.S. 20-141, and the Department of Human Resources may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of other rules, regulations and ordinances. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Department and printed, and copies of such regulations and ordinances shall be filed in the office of the Attorney General as required by Chapter 150A of the General Statutes. Any person violating such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars ($50.00) or imprisonment not exceeding 30 days.

(d) The Commission for Mental Health and Mental Retardation Services is hereby empowered to prescribe civil penalties for the violation of the rules and regulations adopted pursuant to this section, not to exceed five dollars ($5.00). All penalties received pursuant to this section shall be placed in a special fund at each institution to be used by appropriate resolution of the local governing body of such institution to develop, maintain, and supervise parking areas and facilities. (1971, c. 984, s. 1; 1973, c. 476, s. 133; 1975, 2nd Sess., c. 983, s. 85; 1977, c. 679, s. 7.)

Editor's Note. —

The 1975, 2nd Sess., amendment substituted "Attorney General as required by Chapter 150A of the General Statutes" for "Secretary of State of North Carolina" at the end of the third sentence of subsection (b).

The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" at the end of subsection (a), near the beginning of subsection (b), and in subsection (d).

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

ARTICLE 2.

Officers and Employees.

§ 122-24.1. Mental health officials and employees as public guardians. — The officials and employees of the State Department of Human Resources, Division of Mental Health and Mental Retardation Services, or any successor division or agency thereof, and the director and assistant directors of local mental health programs or clinics established under Chapter 122, Article 2A, and of area mental health programs or clinics established under Chapter 122, Article 2C, are authorized to serve as guardians for adults adjudicated incompetent under the provisions of Chapter 35, Article 1A, and they shall do so if ordered to serve in that capacity by the clerk of the superior court having jurisdiction of a guardianship proceeding brought under that Article. (1977, c. 679, s. 7; c. 725, s. 7.)

Cross Reference. — As to social services officials and employees as public guardians, see § 108-102.

Editor's Note. — Session Laws 1977, c. 725, s. 8, provides: "This act shall become effective on March 1, 1978, and shall apply only to appointments made on or after that date."

§ 122-31. Salaries of administrator, chief of medical services, and employees.

Stated in Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

ARTICLE 2A.

Local Mental Health Clinics.

§§ 122-35.1 to 122-35.12A: Repealed by Session Laws 1977, c. 568, s. 4, effective July 1, 1977.

Cross Reference. — For present provisions as to area mental health programs, see §§ 122-35.35 through 122-35.57.

ARTICLE 2B.

Rehabilitation of Alcoholics.

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

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote this section, which formerly required local government agencies to match State funds on a dollar-for-dollar basis.

ARTICLE 2C.

Establishment of Area Mental Health Programs.

§§ 122-35.18 to 122-35.23A: Repealed by Session Laws 1977, c. 568, s. 4, effective July 1, 1977.

Cross Reference. — For present provisions as to area mental health programs, see §§ 122-35.35 through 122-35.57.

ARTICLE 2D.

Community Drug Abuse Programs.

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

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

§ 122-35.26. Local mental health authorities to operate drug abuse programs. — The local mental health authorities representing the areas selected by the Secretary of Human Resources for the establishment of community-based drug abuse programs shall be responsible for the operation of such programs in accordance with rules and regulations of the State Commission for Mental Health and Mental Retardation Services governing the operation of community-based drug abuse programs. Failure to comply with these standards, as determined by the Commission for Mental Health and Mental Retardation Services, shall be grounds for the Department of Human Resources to cease participating in the funding of the particular community-based drug abuse program. Where necessary or expedient the local mental health authority, or its administrative agent, may contract with other agencies, institutions, or resources for the provisions of one or more of the services needed for the proper operation of the community-based drug abuse program, but it shall remain the responsibility of the local mental health authority to insure that such contracted services meet the rules and regulations as set by the Commission for Mental Health and Mental Retardation Services. (1971, c. 1123, s. 3; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first, second and third sentences.

§§ 122-35.28 to 122-35.32: Reserved for future codification purposes.

ARTICLE 2E.

Licensing of Local Mental Health Facilities.

§§ 122-35.33, 122-35.34: Repealed by Session Laws 1977, c. 568, s. 4, effective July 1, 1977.

Cross Reference. — For present provisions as to area mental health programs, see §§ 122-35.35 through 122-35.57.

Editor's Note. — This Article was also repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. See § 143-34.12.

ARTICLE 2F.

Area Mental Health Programs.

Part 1. Policy Statement; Definitions.

§ 122-35.35. Declaration of policy. — Providing community mental health services of the highest possible quality within available resources is an obligation of government in North Carolina to its citizens. The furnishing of such services requires the cooperation and financial assistance of county, State and federal governments.

In order to maximize mental health services and to maximize utilization of federal funds, area mental health authorities are urged to comply to the

maximum extent possible with federal governmental regulations required as a condition of receipt of federal grants.

In order to provide comprehensive mental health services to all citizens at a reasonable cost, the area mental health authority shall make every reasonable effort to collect appropriate reimbursement for its cost in providing such services based upon the ability of the person to pay except where prohibited by policy or law; however, no one shall be refused mental health services because of an inability to pay.

To insure accountability where such services are rendered, the governing board of the area mental health program shall be selected by the county commissioners in the area where such services are to be administered. (1977, c. 568, s. 1.)

Editor's Note. — Session Laws 1977, c. 568, s. 5, makes this Article effective July 1, 1977.

§ 122-35.36. Definitions. — For the purposes of this Article, the following definitions shall apply:

(1) Area Mental Health Authority. — The governing unit authorized by the Commission for Mental Health and Mental Retardation Services and delegated the authority to serve as the comprehensive planning, budgeting, implementing, and monitoring group for community-based mental health, mental retardation, and substance abuse programs. An area mental health authority is a local political subdivision of the State except that a single-county area mental health authority shall be considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.

(2) Area Mental Health Board. — A group of persons appointed by the county commissioners pursuant to the provisions of this Article to serve as the governing body of the area mental health authority.

(3) Area Mental Health Facility. — A mental health facility, public or private, established to serve the needs of a designated catchment area in mental health, mental retardation, or substance abuse.

(4) Catchment Area. — A population base sufficient to secure federal funding under existing federal legislation as it applies to mental health services.

(5) Commission for Mental Health and Mental Retardation Services. — A citizen board designated by State statute to set minimum standards for the operation of State and area mental health, mental retardation, and substance abuse programs.

(6) Department of Human Resources. — The unit of State government authorized to implement, administer, and monitor community-based programs in cooperation with local governmental authorities; such unit is hereinafter referred to as Department.

(7) Medical Doctor. — A person licensed to practice medicine in North Carolina, including a doctor of medicine specializing in the field of psychiatry.

(8) Mental Health Programs. — Sets of activities designed to meet the service needs of citizens. Mental health program or mental health programs refers to programs of general mental health, mental illness, mental retardation, substance abuse, and related fields.

(9) Minimum Standards. — Specifications of the required basic level of activity and required basic levels of human and technical resources necessary for the implementation and operation of mental health programs. Minimum standards are set by the Commission for Mental Health and Mental Retardation Services in all areas of mental health

not otherwise specified in State statutes and such standards shall be administered by the Department of Human Resources.

(10) Operating Costs. — Expenditures made by an area mental health authority in the delivery of community mental health services in the areas of general mental health, mental illness, mental retardation, and substance abuse. Such operating costs shall include the employment of legal counsel on a temporary basis to represent the interest of the area mental health authority.

(11) Qualified Professional. — Any person with appropriate training or experience in the professional fields of mental health care, mental illness, mental retardation, or substance abuse, including but not limited to medical doctors, psychiatrists, psychologists, social workers, and registered nurses.

(12) Substance Abuse. — Self-abusive use of substances, including, but not limited to, alcoholism and drug abuse. (1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in three places.

Part 2. Authorization of Area Mental Health Services.

§ 122-35.37. Establishment of mental health services. — The Department of Human Resources is directed to establish community-based programs of mental health services within catchment areas specified by the Commission for Mental Health and Mental Retardation Services. The provision of services shall be a joint undertaking of the Department and the area mental health authority. The mental health services programs shall be developed by coordinating resources, personnel, and facilities of the area mental health authorities and of the Department of Human Resources, pursuant to this Article. Mental health services shall include, but not be limited to, programs for:

(1) General mental health, mental disorder, and mental health education;

(2) Mental retardation; and

(3) Substance abuse.

Such mental health service programs shall include, but need not be limited to, treatment and preventive services. (1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first sentence.

§ 122-35.38. Designation of Department of Human Resources as the State Mental Health Authority. — The Department of Human Resources is hereby designated as the State Mental Health Authority for purposes of administering federal funds allotted to North Carolina and State funds allotted to the Department pertaining to mental health activities. The Department of Human Resources is further designated as the State agency authorized to administer minimum standards and requirements for mental health services as conditions for participation in federal-State financial aid, and is authorized to promote and develop community mental health services in accordance with the provisions of this Chapter. The Department of Human Resources shall be responsible for administrating minimum standards for area mental health programs.

Nothing in this Chapter shall be construed to prohibit the operation of mental health service programs by the Department of Human Resources at any of the institutions under the control of the Department of Human Resources, or the operation of mental health service programs at the North Carolina Memorial

Hospital in Chapel Hill, or at any other hospital or facility acceptable to the Department of Human Resources. (1963, c. 1166, s. 6; 1965, c. 929, s. 3; 1973, c. 476, s. 133; 1977, c. 568, s. 1.)

§ 122-35.39. Designation of local governmental units to specify responsible area mental health authority. — (a) An area mental health authority, with approval of the Department of Human Resources and the Commission for Mental Health and Mental Retardation Services shall be established by: (i) the board of county commissioners or (ii) jointly by two or more boards of county commissioners.

(b) The unit shall be known as an area mental health authority. County commissioners shall appoint the members of an area mental health board who shall thereafter serve at the pleasure of the county commissioners by whom such appointments were made. The area mental health board thus appointed shall be the area mental health authority for the purposes of this Article.

(c) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area mental health board. These members shall appoint the other members.

(d) The group of county commissioners authorized to make appointments to the area board shall appoint new members to the area mental health board to fill vacancies occurring on the board prior to the expiration of the appointed term of office. Such appointments shall be for the remainder of the unexpired term of office. (1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in subsection (a).

§ 122-35.40. Structure of area mental health board. — (a) The area mental health board shall meet at least six times per year and shall consist of 15 members. However, the number of board members may be increased up to 25 for the purpose of meeting requirements set by federal authorities as a condition to receiving federal aid. Meetings shall be called by the area board chairman or by three or more members of the board after notifying the area board chairman in writing.

(b) The area mental health board shall include:

(1) At least one county commissioner from each county in the area;

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

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

(4) At least three representatives from local citizen organizations to include one each from those active in areas of substance abuse, mental health, and mental retardation;

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

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

(c) Any member of an area mental health board who is a county commissioner shall be deemed to be serving on the board in an ex officio capacity to his public office. The terms of such members shall be concurrent with their respective terms as public officials. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area mental health board, one fourth shall be appointed for one year, one fourth for two years, one fourth for three years, and all remaining members for four years. However, nothing contained herein shall prevent the county commissioners from replacing board members at any time pursuant to G.S. 122-35.39.

(d) Members of the area mental health board are authorized to elect its chairman. The term of office of the area board chairman shall be one year. Nothing in this subsection shall be construed to prohibit a county commissioner area board member from serving as the board chairman. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 133; c. 1355; 1975, c. 400, ss. 1-4; 1977, c. 568, s. 1.)

§ 122-35.41. Designation of the Commission for Mental Health and Mental Retardation Services to set standards for services. — Standards for services not covered under the provision of this Article may be prescribed by the Commission for Mental Health and Mental Retardation Services. All community-based mental health, mental retardation, and substance abuse programs must meet or exceed minimum standards and no other standards shall apply unless specifically established in State or federal statutes or regulations. Failure to comply with the established standards shall be grounds for the Department of Human Resources to cease participating in the funding of the particular community-based program. An area mental health authority may appeal for exceptions to the minimum standards to the Commission for Mental Health and Mental Retardation Services based upon catchment area needs. Such appeal shall be made pursuant to the procedures set forth in G.S. 122-35.52. (1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first and fourth sentences.

Part 3. Responsibilities of Area Mental Health Authorities.

§ 122-35.42. Appropriate local funds. — County and municipal authorities are authorized to appropriate funds for the support of mental health programs which serve the catchment area regardless of whether the service programs are physically located within the boundaries of a single county or whether any facility housing a service program is owned and operated by the local governmental units. Counties are authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149(c) (22) and by the allocation of other revenues whose use is not restricted by law. (1977, c. 568, s. 1.)

§ 122-35.43. Submit application for service program; annual plan. — (a) Subject to the standards of the Commission for Mental Health and Mental Retardation Services, the area mental health authorities shall review and evaluate the area needs and programs in general mental health, mental illness, mental retardation, substance abuse, and related fields, and shall develop with the Department of Human Resources an annual plan for the use, control, and development of State, regional, and area facilities and resources in order to provide a comprehensive program of mental health services for the area residents.

(b) The annual plan of work shall include an inventory of existing services, services to be provided during the next fiscal year, and projected services during the following year, including, but not limited to, service plans for the mentally ill, mentally retarded, and substance abuser. The annual plan shall indicate the expenditure of all State, local, and federal funds for each service according to the source of the fund. The annual plan of each area authority shall include a plan for contracting with the State mental hospital, center for the mentally retarded, and alcoholic rehabilitation center where such facilities are available.

Before State funds are provided to area mental health authorities, such annual plans and subsequent changes shall be subject to approval by the Department of Human Resources. (1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" near the beginning of subsection (a).

§ 122-35.44. Report to the Department and county commissioners. — (a) On a periodic basis, specified by the Department of Human Resources, each area mental health authority shall provide the Department of Human Resources and county commissioners with:

(1) A budget report which indicates receipt and expenditure for the total area mental health program according to a reporting format prescribed by the Department. This format shall conform as nearly as practical to the recommended budget format of the Local Government Commission under the provisions of the Local Government Fiscal Control Act.

(2) An audit report prepared by an independent certified public accounting firm, which such audit report may be made by the county independent certified public accountant as a part of the county's normal annual audit, if satisfactory to the Department.

(b) The Department of Human Resources can require reports of activities and services of the area mental health authority but such reports shall not identify names of individual clients of the local mental health programs unless specifically required by State statute or federal rules and regulations. A copy of all reports required by the Department of Human Resources shall be sent to the county commissioners.

(c) Beginning on July 1, 1977, and at least biannually thereafter, reports required of the area mental health authority by the Department shall be reviewed by the Department of Human Resources and only those reports deemed necessary by the Department shall thereafter be required.

(d) The Department may delay payments and with written notification of cause may reduce or deny payment of funds if an area mental health authority fails to file required reports within the time limit set by the Department. (1977, c. 568, s. 1.)

§ 122-35.45. Personnel. — (a) Technical and Professional Standards. — Subject to the standards of the Commission for Mental Health and Mental Retardation Services, the area mental health authority shall establish technical and professional standards which must be approved by the Department of Human Resources. Such standards shall not nullify compliance with provisions of the classification plan and State competitive service policies.

(b) Area Mental Health Authority Employees. — Employees under the direct supervision of the area mental health authority are employees of the area mental health authority and for the purpose of personnel administration, Chapter 126 of the General Statutes shall apply unless otherwise provided in this Article.

(c) Appointment of Area Mental Health Director. — The area board shall appoint, with the approval of the Department of Human Resources, an area mental health director. The area mental health director shall be the employee of the area board and shall serve at the pleasure of the area board. The director shall be responsible for the appointment of staff, for implementation of the policies and programs of the board, compliance with standards of the Commission for Mental Health and Mental Retardation Services, and for the supervision of all staff and service programs.

(d) Supervision of Services. — Unless otherwise specified, services shall be the responsibility of a qualified professional with approved training and experience

acceptable to the Department of Human Resources as prescribed by regulations of the Commission for Mental Health and Mental Retardation Services. Direct medical and psychiatric services shall be provided by a duly qualified psychiatrist or an individual duly licensed by the State of North Carolina as a medical doctor with adequate training and experience acceptable to the Department of Human Resources. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in subsections (a), (c) and (d).

§ 122-35.46. Salary plans for area mental health employees. — A salary plan for area mental health employees shall be set by the area mental health authority. Such salary plan shall be established in conformity with Chapter 126. In a multiple-county area, such salary plan shall not exceed the highest paying salary plan of any county in that area. In a single-county area, such salary plan shall not exceed the county's salary plan. The salary plan limitations set forth in this section may be exceeded only if the area mental health authority and the board or boards of county commissioners, as the case may be, jointly agree to exceed these limitations. (1977, c. 568, s. 1.)

§ 122-35.47. Require fee for service. — The area mental health authority shall make every reasonable effort to collect appropriate reimbursement for its costs in providing mental health services to persons able to pay for service, including insurance or third-party payments. However, no one shall be refused mental health services because of an inability to pay. The area mental health authority will prepare a schedule of fees for its services designed to cover the reasonable costs of providing such services. All funds collected from fees shall be utilized for the fiscal operation or capital improvement for the area mental health service program and shall not reduce or replace the budgeted commitment of local tax revenue. (1977, c. 568, s. 1.)

§ 122-35.48. Limitation of professional reimbursement. — Area mental health authorities will adopt and enforce a policy (i) under which fees for the provision of services directly under the supervision of the area authority will be paid to the area mental health authority; (ii) under which employees of the area authority are prohibited from providing such services on a private basis which requires the use of the resources and facilities of the area authority; and (iii) under which employees may accept dual compensation and dual employment with a written permission of the area mental health authority. (1977, c. 568, s. 1.)

§ 122-35.49. Contract for services. — The area mental health authority may contract with other public or private agencies, institutions, or resources for the provision of services, but it shall be the responsibility of the area mental health authority to insure that such contracted services meet the rules and regulations as set by the Commission for Mental Health and Mental Retardation Services. Terms of the contract shall require the area mental health authority to monitor the contract to assure that minimum standards are met. (1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first sentence.

§ 122-35.50. Appeal by area mental health authority. — The area mental health authority may appeal to the Commission for Mental Health and Mental Retardation Services any departmental action regarding rules and regulations which affects its program or plan for services. (1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services."

§ 122-35.51. Licensing required. — An area mental health facility operated under the provisions of Chapter 122 of the General Statutes shall obtain a license permitting such operation. Subject to standards governing the operation and licensing of these facilities set by the Commission for Mental Health and Mental Retardation Services, the Department of Human Resources shall be responsible for issuing licenses. (1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the second sentence.

§ 122-35.52. Appeal from the denial or revocation of a license. — An area mental health facility whose license is revoked or whose license application is denied by the Department shall first be given 60 days' written notice specifying the grounds for such revocation or denial. The area mental health authority is entitled, by written request to the Commission within the 60-day period of notification, to a hearing before the Commission for Mental Health and Mental Retardation Services. The hearing shall be held within 20 days of the written request and shall be open to the public. The decision of the Commission shall be made within 10 days after such hearing. Any area mental health facility whose license is revoked shall be allowed to continue to operate until the appeal provided by this section is concluded. (1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the second sentence.

Part 4. Appropriation for Mental Health Service Programs.

§ 122-35.53. Allocation of all funds to area mental health authorities. — All State appropriations shall be allocated to area mental health authorities in accordance with the annual plan and budget adopted by the area mental health authority and approved by the Department of Human Resources. However, the area mental health authorities are empowered to receive and allocate nonstate resources for the purpose of capital improvements and equipment acquisition as long as such expenditures are made in support of the annual plan of work. The final share of State funds will be allocated on the basis of actual expenses and reported in a manner prescribed by the Department. Unexpended State appropriations will be remitted to the Department of Human Resources within 120 days after the close of the fiscal year.

Unless specified by the Department of Human Resources, State appropriations to area mental health authorities shall be used exclusively for the operating costs of the programs. All real property shall be provided by local or federal funds. Equipment necessary for the operation of such programs shall be provided by local, State, federal, or donated funds or any combination thereof. Title to such real property and the authority to acquire or mortgage same shall

be held by the county where such property is located; however, the authority to lease real property shall be held by the area mental health authority. Title to personal property and the authority to acquire, lease, or mortgage same shall be held by the area mental health authority. All community mental health, mental retardation, and substance abuse funds shall be expended in accordance with rules and regulations of the Department of Human Resources and in accordance with the minimum standards set by the Commission for Mental Health and Mental Retardation Services. Failure to comply with rules, regulations, and minimum standards may be grounds for the Department of Human Resources to cease participation in the funding of the particular mental health program. The Department may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal in accordance with G.S. 122-35.52. (1973, c. 476, s. 133; c. 613; 1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the fifth sentence of the second paragraph.

§ 122-35.54. Allocations to be made annually; base grant; additional allocations. — Subject to the provisions of this Article, allocations shall be made annually by the Department of Human Resources to area mental health authorities for the provision of community-based service programs. Such allocations shall be made in the form of a base grant computed on the basis of five hundred dollars ($500.00) per 1,000 population within the catchment area. Additional allocations may be made to the area mental health authorities on the conditions and formula basis as provided in this Part. (1977, c. 568, s. 1.)

§ 122-35.55. Allocation of State matching funds to area mental health authorities. — State-appropriated matching funds shall be distributed subject to an adopted regulation of the Department which sets the formula based upon the counties' relative fiscal capacity to fund mental health services. Such regulations shall be reviewed biannually by the Department. Area mental health funds used for matching State funds shall include, but not be limited to, fees from services, fees from agencies under contract, gifts and donations, and county and municipal funds. For the purpose of this section, area financial participation used to match State allocations shall not include State or federal funds. (1977, c. 568, s. 1.)

§ 122-35.56. Direct grants for services. — In addition to the matching grants provided elsewhere in this Article, the Department shall make direct grants to area mental health authorities from special State and federal funds appropriated for special programs. Such grants shall be for the treatment of persons by community facilities rather than in regional institutions and shall be administered as provided by G.S. 122-35.53 and G.S. 122-35.55. (1977, c. 568, s. 1.)

§ 122-35.57. Responsibilities of those receiving State and federally administered appropriations. — All resources allocated to and received by any area mental health authority and used for programs of mental health, mental retardation, substance abuse or other related mental health fields are subject to the conditions specified in all Parts of this Article and to the standards of the Commission for Mental Health and Mental Retardation Services. (1977, c. 568, s. 1; c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" at the end of the section.

ARTICLE 3.

Admission of Patients; General Provisions; Patients' Rights.

Part 1. Admission of Patients; General Provisions.

§ 122-36. Definitions.

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

Editor's Note. —

The second 1973 amendment, ratified April 12, 1974, and made effective 60 days after ratification, repealed subsection (f), defining "qualified physician."

As the other subsections were not changed by the amendment, they are not set out.

Section 122-58.1 et seq., and the related definition of mental illness under this section are not unconstitutionally vague. In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

The definition of mental illness contained in § 35-1.1 is virtually the same definition contained in subsection (d). In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

The definition of mental illness in subsection (d) is certainly capable of being understood and objectively applied with the help of medical experts. In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

Facts Supporting Finding as to Mental Illness. — The facts which the court recorded as supporting its ultimate findings, that respondent had delusions as to the extent of the danger posed by the Ku Klux Klan, that she misinterpreted stimuli, and that she was out of touch with reality, may furnish some support for the ultimate finding that she was mentally ill as those words are defined in this section, but they furnish no support for the court's alternative finding that she was inebriate. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

Stated in Powell v. Duke Univ., Inc., 18 N.C. App. 736, 197 S.E.2d 910 (1973).

Cited in In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

§ 122-39. Reciprocal agreements with other states to set requirements for State hospital care and release of patients. — The Department of Human Resources 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 Commission for Mental Health and Mental Retardation Services or the Secretary of Human Resources or any physician, psychiatrist, officer, agent, or employee of the Department of Human Resources 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; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the last sentence.

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

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

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

Part 2. Patients' Rights.

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

Cross Reference. — As to rights of minor patients, see §§ 122-55.13, 122-55.14.

Editor's Note. — The 1973 amendment inserted "adult" near the middle of the first sentence.

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

(1) Send and receive sealed mail, and have access to writing material, postage, and staff assistance when necessary;

(2) Contact and consult with legal counsel and private physicians of his choice at his expense.

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

(1) Make and receive confidential telephone calls, provided that all long distance calls shall be paid for by the patient at the time of making the call or made collect to the receiving party;

(2) Receive visitors between the hours of 8:00 A.M. and 9:00 P.M. for a period of at least six hours daily, two hours of which shall be after the hour of 6:00 P.M.;

(3) Make visits outside the institution unless such patient was committed to a treatment facility under Article 11 of Chapter 122 of the General Statutes;

(4) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;

(5) Keep and use his own clothing and personal possessions;

(6) Communicate and meet under appropriate supervision with persons of his own choice, upon the consent of such persons;
(7) Participate in religious worship;
(8) Keep and spend a reasonable sum of his own money;
(9) Retain a motor vehicle driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes;
(10) Have access to individual storage space for the patient's private use.

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

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

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

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

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

Editor's Note. — The 1973 amendment rewrote the first paragraph and deleted "patently" preceding "competent" near the middle of the fourth sentence of the second paragraph. In directing the deletion of the word "patently," the amendment referred to "line 6 of the second paragraph." The reference was plainly to line six of the paragraph as set out in the 1973 Cumulative Supplement, rather than in 1974 Replacement Volume 3B.

"Institutionalized patient" means any inpatient who has been voluntarily admitted or involuntarily committed to a treatment facility in North Carolina. Opinion of Attorney General to Dr. Pedro Carreras, 44 N.C.A.G. 272 (1975).

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

Part 3. Rights of Minor Patients.

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

Parent-Child Relationship Unaffected. — See opinion of Attorney General to Dr. Lenore Behar, Chief, Children and Youth Services, Division of Mental Health Services, 44 N.C.A.G. 3 (1974).

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

(1) Communicate and consult with the agency or individual having legal custody of him; and

(2) Communicate and consult with legal counsel and private mental health or mental retardation specialists of his or his legal custodian's or guardian's choice, at his own expense.

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

(1) Receive special education and vocational training in addition to other forms of treatment;

(2) Participate in play, recreation, physical exercise, and outdoor activity on a regular basis, in accordance with his needs;

(3) Keep and use his own clothing and personal possessions under appropriate supervision;

(4) Participate in religious worship;

(5) Receive such assistance as needed in sending and receiving correspondence, and in making telephone calls at his own expense;

(6) Receive visitors, under appropriate supervision, between the hours of 8 A.M. and 9 P.M. for a period of at least six hours daily, two hours of which shall be after the hour of 6 P.M., such visiting not to take precedence over school or therapies; and

(7) Have access to individual storage space for his own use.

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

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

ARTICLE 4.

Voluntary Admission.

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

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

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

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

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

Editor's Note. — Subsection (f) of § 122-56.2, defining "qualified physician," was repealed by Session Laws 1973, c. 1408, s. 3.

§ 122-56.3. Procedure for voluntary admissions. — Any person who believes himself to be in need of treatment for mental illness or inebriety may seek voluntary admission to a treatment facility by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the person seeking admission, is required. The application shall acknowledge that the applicant may be held by the treatment facility for a period of 72 hours subsequent to any written request for release that he may make. At the time of application, the facility shall provide the applicant with the appropriate form for discharge. The application form shall be available at all times at all treatment facilities. However, no one shall be denied admission because application forms are not available. Any person voluntarily seeking admission to a treatment facility must be examined and evaluated by a qualified physician of the facility within 24 hours of presenting himself for admission. The evaluation shall determine whether the person is in need of treatment for mental illness or inebriety, or further psychiatric evaluation by the facility. If the evaluating physician or physicians determine that the person is not in need of treatment or further evaluation by the facility, or that the person will not be benefitted by the treatment available, the person shall not be accepted as a patient. (1973, c. 723, s. 1; c. 1084.)

Voluntarily Admitted Patient May Be Involuntarily Returned after Escape. — See opinion of Attorney General to Mr. R.J. Bickel, Division of Mental Health Services, Department of Human Resources, 44 N.C.A.G. 52 (1974).

Quoted in In re Long, 25 N.C. App. 702, 214 S.E.2d 626 (1975).

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

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

Article 4 of Chapter 122 is constitutionally inadequate to protect interest of minor who is admitted at the parent's request. In re Long, 25 N.C. App. 702, 214 S.E.2d 626 (1975).

Minor is entitled to protection of due-process procedures. In re Long, 25 N.C. App. 702, 214 S.E.2d 626 (1975).

Policy extending due process protections to minors, enunciated in In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967) is applicable to minor under this section. In re Long, 25 N.C. App. 702, 214 S.E.2d 626 (1975).

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

Evidence Admitted in Violation of This Section Is Subject to the Doctrine of Harmless Error. — See In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

§ 122-56.7. Judicial determination. — (a) A hearing shall be held in district court in the county in which the treatment facility is located within 10 days of the day a minor or a person adjudicated non compos mentis is admitted to a treatment facility pursuant to G.S. 122-56.5.

(b) The court shall determine whether

(1) Such person is mentally ill or inebriate and

(2) Is in need of further treatment at the treatment facility.

(c) The initial hearing and all subsequent proceedings shall be governed by the involuntary commitment procedures of Chapter 122, Article 5A of the General Statutes. Provided that, in a case involving an indigent respondent located at a regional psychiatric facility for the care and treatment of the mentally ill and inebriate, special counsel authorized by G.S. 122-58.12 shall act as his counsel at the initial hearing.

(d) In addition to the notice of hearings and rehearings to the respondent and his counsel required under G.S. 122-58.5 and G.S. 122-58.11(a) respectively, notice shall be given by the clerk to the parent, person standing in loco parentis, or guardian of a minor or a person adjudicated non compos mentis in accordance with the provisions of G.S. 122-58.18A. (1975, c. 839; 1977, c. 756.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added subsection (d).

Legislative Concern. — The addition of this section to Chapter 122 by the 1975 Session of the General Assembly indicates that the legislature shared the concern for the protection of due process rights of juveniles. In re Mikels, 31 N.C. App. 470, 230 S.E.2d 155 (1976).

The post-admission procedures specified by this section do not violate the right to privacy of a voluntarily admitted minor or incompetent person. Opinion of Attorney General to Mr. John L. Pinnix, 20 August 1975.

§ 122-56.8. Confidentiality of court record of minors; violation a misdemeanor; court record to be expunged when minor becomes adult. — (a) The court records of a minor made in all proceedings pursuant to G.S. 122-56.7 are hereby declared to be confidential and shall not be open to the general public for inspection except when such disclosure is provided for in G.S. 122-56.9.

(b) It shall be a misdemeanor for any person to disclose the confidential court records of subsection (a) of this section to members of the general public.

(c) The court records described in subsection (a) of this section shall, upon the request of the parent, guardian, or party admitted, be expunged from the files of the court after the party admitted has reached adulthood and has been released. (1977, c. 696, s. 1.)

Editor's Note. — Session Laws 1977, c. 696, s. 2, makes this section effective July 1, 1977.

§ 122-56.9. Exception to confidentiality rule; procedure. — Any person seeking information contained in the court files or the court records of proceedings involving minors made pursuant to an action under G.S. 122-56.7 may file a written motion in the cause setting out why the information is needed. A district court judge may issue an order to disclose the information sought if he finds such order is appropriate under the circumstances and if he finds that it is in the best interest of the minor or of the public to have such information disclosed. (1977, c. 696, s. 1.)

Editor's Note. — Session Laws 1977, c. 696, s. 2, makes this section effective July 1, 1977.

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

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

ARTICLE 5A.

Involuntary Commitment.

§ 122-58.1. Declaration of policy. — It is the policy of this State that no person shall be committed to a mental health facility unless he is mentally ill or an inebriate and imminently dangerous to himself or others, or unless he is mentally retarded and, because of an accompanying behavior disorder, is imminently dangerous to others; that a commitment will be accomplished under conditions that protect the dignity and constitutional rights of the person; and that committed persons will be discharged as soon as a less restrictive mode of treatment is appropriate. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 1.)

Revision of Article. — Session Laws 1973, c. 1408, ratified April 12, 1974, and made effective 60 days after ratification, revised and rewrote this Article, substituting present §§ 122-58.1 through 122-58.18 for former §§ 122-58.1 through 122-58.8. No attempt has been made to point out the changes effected by the revision, but where appropriate, the historical citations to the sections of the former Article have been added to corresponding sections in the Article as revised.

Editor's Note. — The 1977 amendment, effective July 1, 1977, inserted "or unless he is mentally retarded and, because of an accompanying behavior disorder, is imminently dangerous to others" near the middle of the section.

Chapter 122 was written to provide constitutionally defensible procedural and evidentiary rules. To allow juvenile court judges to commit minors to mental institutions with a lesser standard than that set forth in Chapter 122 would subject such commitments to constitutional challenge as a deprivation of liberty without due process of law. In re Mikels, 31 N.C. App. 470, 230 S.E.2d 155 (1976).

The concept of "fundamental fairness" is fully realized by the procedure in this article. There are two humanitarian purposes of the involuntary commitment proceedings. Fundamentally, the State is attempting temporarily to withdraw from society those persons whose mental state is such that their presence may pose a danger to society or to themselves. Secondly, the State is providing treatment to those individuals who may not otherwise have the wisdom or the wherewithal to seek it themselves. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

This article and the related definition of mental illness under § 122-36 are not unconstitutionally vague. In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

Applied in In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975); In re Neatherly, 28 N.C. App. 659, 222 S.E.2d 486 (1976).

Quoted in Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974); In re Hatley, 291 N.C. 693, 231 S.E.2d 633 (1977).

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

(1) The phrase "dangerous to himself" includes, but is not limited to, those mentally ill or inebriate persons who are unable to provide for their basic needs for food, clothing, or shelter;

(2) The words "inebriate," and "mental illness," and "mentally retarded" have the same meaning as they are given in G.S. 122-36; and

(3) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, and State highway patrolman;

(4) "Behavior disorder" when used in this Article shall mean a pattern of maladaptive behavior that is recognizable by adolescence or earlier and is characterized by gross outbursts of rage or physical aggression against other persons or property. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, ss. 2, 12.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted " 'inebriate,' 'mental illness,' and 'mentally retarded' " for " 'inebriety' and 'mental illness' " in subdivision (2) and added subdivision (4).

Cited in In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

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

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

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

(d) An affiant who is a qualified physician may execute the oath to the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. (1973, c. 726, s. 1; c. 1408, s. 1; c. 400, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, inserted "or who is mentally retarded and, because of an accompanying behavior disorder, is imminently dangerous to others" in the first sentence of subsection (a) and "or is mentally retarded and, because of an accompanying behavior disorder, is imminently dangerous to others" in subsection (b).

Physician Who Is Licensed Other Than in North Carolina and Who Is Practicing with Veterans Administration Is "Qualified Physician". — See opinion of Attorney General to Dr. N.P. Zarzar, Division of Mental Health Services, 43 N.C.A.G. 400 (1974), issued under this Article prior to its 1973 revision.

Right to trial by jury did not exist at common law in insanity proceedings and is thus not required under this section. In re Appeal of Taylor, 25 N.C. App. 642, 215 S.E.2d 789 (1975).

The right to trial by jury guaranteed by North Carolina Const., Art. I, § 25, applies only to cases in which the prerogative existed at common law or by statute in existence at the time the

Constitution was adopted. In re Appeal of Taylor, 25 N.C. App. 642, 215 S.E.2d 789 (1975).

Applied in In re Mostella, 25 N.C. App. 666, 215 S.E.2d 790 (1975).

Quoted in French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

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

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

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

(d) The findings of the qualified physician and the facts on which they are based, shall be in writing, in all cases. A copy of the findings shall be transmitted to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician shall also communicate his findings to the clerk by telephone. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1.)

Editor's Note. — The first 1977 amendment, effective July 1, 1977, in subsection (c), inserted "or is not mentally retarded or lacks a behavior disorder which would cause the individual to be imminently dangerous to others" in the second sentence and "or is mentally retarded, and because of an accompanying behavior disorder, is imminently dangerous to others" in the third sentence.

The second 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the last sentence of subsection (c).

The third 1977 amendment deleted "Division of Mental Health Services of the" preceding "Department of Human Resources" in the third sentence of subsection (c).

Quoted in In re Hatley, 291 N.C. 693, 231 S.E.2d 633 (1977).

Stated in French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

Cited in In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

§ 122-58.5. Duties of clerk of superior court. — Upon receipt of a qualified physician's finding that a respondent is mentally ill or an inebriate, and imminently dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is imminently dangerous to others, the clerk of superior court shall, upon direction of a district court judge, assign counsel, if necessary, calendar the matter for hearing, and notify the respondent and counsel of the time and place of the hearing. Notice must be given at least 48 hours in advance, unless waived by counsel for the respondent. (1973, c. 1408, s. 1; 1977, c. 400, s. 5.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, inserted "or is mentally retarded, and because of an accompanying behavior disorder, is imminently dangerous to others" in the first sentence.

Time Constitutionally Sufficient. — This section states that at the minimum the notice should be served 48 hours in advance of the hearing. This time period is constitutionally adequate to allow for sufficient preparation, especially in light of the fact that continuances may be granted, § 122-58.7(a), which will prevent any prejudice because of insufficient time to prepare. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

As Is Notice. — This section uses the terms "notify" and "notice." There can be little doubt that these terms were used to carry the full panoply of due process notice mandated by the law of the land. When the legislature uses the term "notice" it means that notice as is required by due process and, therefore, this section is constitutional on its face. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

Procedure Reasonably Calculated to Inform. — In light of the nature of the proceedings, the procedure in this section is reasonably calculated to inform the respondent in an involuntary commitment proceeding of the nature and purpose of the hearing and, therefore, is not constitutionally infirm. There is no constitutional mandate to notify the respondent of the burden of proof or to serve upon him a list of witnesses and the substance of their proposed testimony. Such is not even required in a criminal proceeding. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

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

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

(c) Pending the district court hearing, the qualified physician attending the respondent is authorized to administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, inserted "or is mentally retarded, and because of an accompanying behavior disorder, is imminently dangerous to others" in the first sentence of subsection (a).

Stated in French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

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

(b) The senior regular resident superior court judge of a judicial district in which a regional psychiatric facility for the care and treatment of the mentally ill and inebriate is located shall appoint an attorney licensed to practice law in North Carolina as part-time special advocate to represent the petitioner's interest at all hearings, rehearings, and supplemental hearings, held pursuant to this Article. Such part-time special advocate will serve at the pleasure of the appointing judge, may engage in the private practice of law, and shall receive annual compensation as fixed by the General Assembly. The special advocate shall be considered an independent contractor and not an employee of the State; accordingly, the State shall not withhold any taxes or social security from the compensation paid to such special advocate.

(c) If the respondent is allegedly mentally ill or mentally retarded, he shall be represented by counsel of his choice, or, if he is indigent within the meaning of G.S. 7A-450, or refuses to retain counsel if financially able to do so, by counsel appointed by the court. If the respondent is an alleged inebriate, he may be represented by counsel of his choice, or he may waive counsel, if the judge finds that he is sober and capable of making an informed decision, and that the waiver is voluntary. If the alleged inebriate does not waive counsel and is an indigent within the meaning of G.S. 7A-450, the court shall appoint counsel to represent him.

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

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

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

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

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

(i) To support a commitment order, the court is required to find, by clear, cogent, and convincing evidence, that the respondent is mentally ill or inebriate, and imminently dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is imminently dangerous to others. The court shall record the facts which support its findings. (1973, c. 726, s. 1; c. 1408, s. 1; 1975, cc. 322, 459; 1977, c. 400, s. 7; c. 1126, s. 1.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, substituted "If the respondent is allegedly mentally ill, he" for "The respondent" at the beginning of the first sentence of subsection (c) and added the second and third sentences of subsection (c).

The second 1975 amendment rewrote subsection (b), which formerly provided that on order of the presiding judge, the solicitor (district attorney) should represent the petitioner.

The first 1977 amendment, effective July 1, 1977, inserted "or mentally retarded" in the first sentence of subsection (c) and added "or is mentally retarded, and because of an accompanying behavior disorder, is imminently dangerous to others" to the end of the first sentence of subsection (i).

The second 1977 amendment, effective July 1, 1977, rewrote subsection (b).

Commitment Not Violative of Equal Protection. — It is true that both the class of persons subjected to involuntary commitment proceedings under this section and the class of persons subjected to the appointment of a guardian under § 35-2 may have mental problems. However, it is at that point that the similarity ends. The standards and purposes of the proceedings to commit someone who is mentally ill or an inebriate and imminently dangerous to himself or others are entirely different from the standards and purposes of the appointment of a guardian to one who is found incapable of handling his own affairs. What exists here is the State giving a jury trial to those persons for whom a guardian is being appointed and not to those persons being involuntarily committed. There is no violation of the equal protection clause. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

To apply the privilege against self-incrimination to the type of proceedings under this article would be to destroy the valid purposes which they serve as it would make them unworkable and ineffective. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

The North Carolina 10-day custody period prior to a full adversary hearing does not constitute a denial of due process. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

The failure to provide a jury trial in involuntary commitment proceedings does not violate the equal protection clause. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

The waiver provision of subsection (d) does not offend due process. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

Standard of Proof Constitutional. — A standard of proof beyond a reasonable doubt is not mandated by the due process clause, under subsection (i) and the North Carolina legislature's choice of proof by clear, cogent and convincing evidence under subsection (i) does not violate that constitutional prohibition. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977).

Failure to Afford Right of Cross-Examination. — Where the record shows that examining physician's affidavit formed the basis of order of commitment, and since respondent was not afforded the right, guaranteed by statute, to cross-examine the witness/physician, the evidence was not sufficient to support findings required and to support commitment. In re Benton, 26 N.C. App. 294, 215 S.E.2d 792 (1975).

Whether a person is mentally ill or inebriate, and whether he is imminently dangerous to himself or others, present questions of fact. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

Findings Prerequisite to Commitment. — Statutory mandate requires as a condition to a valid commitment order that the district court find two distinct facts: first, that the respondent is mentally ill or inebriate, as those words are defined in § 122-36; and second, that the respondent is imminently dangerous to himself or others. In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

Finding considered sufficient to show a determination by the court that respondent was dangerous to herself as defined in § 122-58.2(1) was not finding that the danger was imminent so as to justify commitment. In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

The mandate of subsection (i) requires as a condition to a valid commitment order that the district court find two distinct facts: first, that the respondent is mentally ill or inebriate, as those words are defined in § 122-36; and second, that the respondent is imminently dangerous to himself or others. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

The words "imminently dangerous" in subsection (i) simply mean that a person poses a danger to himself or others in the immediate future. In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

No Overt Act Required. — An overt act may be clear, cogent and convincing evidence which will support a finding of imminent danger under subsection (i), but it is not necessary that there be an overt act to establish imminent dangerousness. In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

The difference in the present law and the old is that the requirement of "overt acts" under the former law has been replaced by a requirement of "clear, cogent and convincing evidence" under subsection (i). In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

For instances where the State failed to present clear, cogent and convincing evidence of imminent danger, see In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

The finding that respondent was imminently dangerous to herself and others was not supported by clear, cogent and convincing evidence. In re Hatley, 291 N.C. 693, 231 S.E.2d 633 (1977).

Inadequate Evidence for Findings. — The finding that respondent was "preoccupied with religious subjects" hardly furnishes support for an ultimate finding either that she was mentally ill or that she was imminently dangerous to herself or others. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

Standards on Review. — On appeal from an order of commitment, the questions for determination in the Court of Appeals become (1) whether the court's ultimate findings are indeed supported by the "facts" which the Court recorded in its order as supporting its findings, and (2) whether in any event there was competent evidence to support the Court's findings. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

Applied in In re Crouch, 28 N.C. App. 354, 221 S.E.2d 74 (1976); In re Neatherly, 28 N.C. App. 659, 222 S.E.2d 486 (1976).

§ 122-58.7A. Venue of district court hearing when respondent held at regional facility pending hearing. — (a) In all cases where the respondent is held at a regional mental health facility pending the district court hearing as provided in G.S. 122-58.6, unless the respondent through counsel objects to the venue, the hearing required by G.S. 122-58.7 shall be held in the county in which the facility is located.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court with whom the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122-58.5. The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122-58.12. (1975, 2nd Sess., c. 983, s. 133.)

Editor's Note. — Session Laws 1975, 2nd Sess., c. 983, s. 152, makes this section effective July 1, 1976.

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

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

(c) If the court orders outpatient treatment, and the respondent fails to adhere to the prescribed outpatient treatment program, on report of the failure by the chief of medical services of the treatment facility, the court, upon notice to the respondent and his counsel, may order a supplemental hearing, and further order inpatient treatment in a designated or licensed facility for a period of not more than 90 days running from the date of the order. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 8; c. 739, s. 2.)

Editor's Note. — The first 1977 amendment, effective July 1, 1977, inserted "or is not mentally retarded or lacks a behavior disorder which would cause the individual to be imminently dangerous to others" in subsection (a) and "or is mentally retarded, and because of an accompanying behavior disorder, is imminently dangerous to others" in the first sentence of subsection (b).

The second 1977 amendment substituted "Department of Human Resources" for "Division of Mental Health Services" at the end of the first sentence of subsection (b).

Applied in In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975); In re Mostella, 25 N.C. App. 666, 215 S.E.2d 790 (1975).

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

Appeal is not moot solely because period of commitment has expired. In re Appeal of Taylor, 25 N.C. App. 642, 215 S.E.2d 789 (1975).

Though respondent has been released, her appeal is not moot. So long as judgment of involuntary commitment remains unchallenged, potentially adverse collateral consequences may continue. In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

Applied in In re Crouch, 28 N.C. App. 354, 221 S.E.2d 74 (1976).

§ 122-58.10. Duty of assigned counsel; discharge. — Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, if any, or upon transfer of the respondent to a regional mental health facility, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a community mental health facility, assigned counsel remains responsible for his representation until discharged by order of district court, or until the respondent is unconditionally discharged from the community facility. (1973, c. 1408, s. 1.)

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

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

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

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

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

(f) There are no rehearings for outpatients. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 9.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, inserted "or is mentally retarded, and because of an accompanying behavior disorder, is imminently dangerous to others" in the third sentence of subsection (d).

This section clearly proscribes the indeterminate commitment of any patient without periodic rehearings. In re Mikels, 31 N.C. App. 470, 230 S.E.2d 155 (1976).

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

§ 122-58.12. Counsel for indigents at rehearings. — (a) The senior regular resident superior court judge of a judicial district in which a regional psychiatric facility for the care and treatment of the mentally ill and inebriate is located shall appoint an attorney licensed to practice in North Carolina as special counsel for the mentally ill, inebriate, and mentally retarded with an accompanying behavior disorder who are indigent. Such special counsel shall serve at the pleasure of the appointing judge, shall not privately practice law, and shall receive annual compensation within the salary range for assistant district attorneys, as fixed by the Administrative Officer of the Courts. It shall be the duty of the special counsel to represent at rehearings under this Article all indigent respondents committed to the facility by a district court judge for mental illness, inebriety, or mental retardation with an accompanying behavior disorder and to represent all indigent respondents who, after a rehearing, appeal to the Court of Appeals. The initial determination of indigency shall be made by the special counsel in accordance with G.S. 7A-450(a), but is subject to redetermination by the presiding judge.

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

(c) In the event of a vacancy in the office of special counsel, or his incapacity, or a conflict of interest, counsel for indigents at rehearings may be assigned by a district judge of the district from among those members of the bar who maintain law offices within 20 miles of the regional facility. Counsel may also be so assigned when, in the opinion of the Administrative Officer of the Courts, the volume of cases warrants. (1973, c. 47, s. 2; c. 1408, s. 1; 1977, c. 400, s. 11.)

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

The 1977 amendment, effective July 1, 1977, in subsection (a), substituted "mentally ill, inebriate, and mentally retarded with an accompanying behavior disorder" for "mentally ill and inebriate" in the first sentence and "mental illness, inebriety, or mental retardation with an accompanying behavior disorder" for "mental illness or inebriety" in the third sentence.

No statutory authorization exists for special counsel to represent respondents on appeals from their original commitment hearings. See opinion of Attorney General to Mr. C.E. Johnson, Chief District Court Judge, Twenty-Sixth Judicial District, 46 N.C.A.G. 185 (1977).

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

Stated in In re Mikels, 31 N.C. App. 470, 230 S.E.2d 155 (1976).

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

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

This section requires a city to provide the transportation necessary to take a resident of the city who is being processed for involuntary commitment to a community mental health facility which is located outside of the city but inside of the same county. Opinion of Attorney General to Mr. W.B. Trevorrow, 7 October 1975.

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

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

§ 122-58.16. Use of community and area mental health facilities. — Directors of community mental health facilities and area mental health programs shall submit for approval by the Division of Mental Health and Mental Retardation Services, plans consistent with this Article, for maximum utilization of community and area mental health facilities. Such plans shall be formulated after consultation with local court officials and the local medical society. (1973, c. 1408, s. 1; 1977, c. 679, s. 8.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first sentence.

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

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

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

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

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

§ 122-58.19. Place of commitment of persons who are mentally retarded, and because of an accompanying behavior disorder, are imminently dangerous to others. — A person who is mentally retarded, and because of an accompanying behavior disorder, is imminently dangerous to others shall be committed, when commitment is deemed proper by the appropriate official pursuant to the provisions of this Article, to a public or private mental health facility designated or licensed by the Division of Mental Health and Mental Retardation Services. Nothing in this Article shall be construed to permit the commitment of such individual to a regional mental retardation center or a private mental retardation facility. (1977, c. 400, s. 10; c. 679, s. 8.)

Editor's Note. — Session Laws 1977, c. 400, s. 13, makes the act effective July 1, 1977.

The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first sentence.

§ 122-58.20. Advance notification to petitioner of involuntary commitment hearings and rehearings; waiver. — (a) The clerk of court shall notify the petitioner at least 48 hours in advance of all hearings and rehearings in which the district court might determine to commit the respondent, extend the respondent's commitment period, or discharge the respondent from the treatment facility. Such notice shall be in any of the following ways:

(1) By service of such notice on the petitioner by the sheriff of the county in which the petitioner resides; or

(2) By depositing notice of such hearing in the United States mail, postage prepaid and duly certified, in an envelope addressed to the petitioner at his last known address, at least three days prior to said hearing or rehearing. The certified receipt showing the date of deposit of such notice shall be admissible as evidence of notice of such hearing or rehearing.

(b) The petitioner may file a written waiver of his right to notice under this section with the clerk of court. (1977, c. 414, s. 1.)

Editor's Note. — Session Laws 1977, c. 414, s. 2, makes the act effective July 1, 1977.

§ 122-58.21. Commitment of persons to the psychiatric service of North Carolina Memorial Hospital. — Except as otherwise specifically provided in this section, references in this Article to regional mental health facilities shall be deemed to include the psychiatric service of the North Carolina Memorial Hospital at Chapel Hill. Such facility may be used for temporary detention of the respondent pending a district court hearing and for commitment of the respondent subsequent to such a hearing. No person shall be held at or committed to the psychiatric service of the North Carolina Memorial Hospital without the prior approval of the director of the inpatient service or his designee.

Special counsel for respondents as described in G.S. 122-58.12 shall not be appointed for the North Carolina Memorial Hospital. Legal counsel for the respondent at all hearings shall be provided in accordance with G.S. 122-58.7(c). Rehearings for patients committed to the psychiatric service of the North Carolina Memorial Hospital shall be held at the hospital or at the Orange County Courthouse, and counsel for respondents at rehearings shall be assigned from among the members of the bar of the same county. (1977, c. 738, s. 1.)

Editor's Note. — Session Laws 1977, c. 738, s. 3, makes this section effective July 1, 1977.

ARTICLE 6.

Emergency Hospitalization.

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

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

But Doctors Had Right to Rely on It. — While a party may not assert a right arising out of a statute which has been declared unconstitutional, the principle does not strike down all undertakings made in reliance upon said statute. Powell v. Duke Univ., Inc., 18 N.C. App. 736, 197 S.E.2d 910, cert. denied, 284 N.C. 122, 199 S.E.2d 660 (1973), holding that doctors were entitled to rely on provisions of section prior to time it was held unconstitutional.

ARTICLE 7.

Judicial Hospitalization.

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

Repealed §§ 122-63 and 122-65 Were Unconstitutional. — The provisions of §§ 122-63 and 122-65, before their repeal, did not comport with constitutional requirements of procedural due process, and they were unconstitutional on their face. In re Confinement of Hayes, 18 N.C. App. 560, 197 S.E.2d 582, appeal dismissed, 283 N.C. 753, 198 S.E.2d 729 (1973).

§§ 122-65.1, 122-65.2: Repealed by Session Laws 1977, c. 738, s. 2, effective July 1, 1977.

Cross Reference. — As to involuntary commitment, see § 122-58.1 et seq.

§ 122-65.5: Repealed by Session Laws 1977, c. 738, s. 2, effective July 1, 1977.

ARTICLE 9.

Centers for Mentally Retarded.

§ 122-69. Department of Human Resources 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 Department of Human Resources. The Department of Human Resources 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 Commission for Mental Health and Mental Retardation Services 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 Commission for Mental Health and Mental Retardation Services may adopt. (1963, c. 1184, s. 6; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Commission for Mental Health and Mental Retardation Services" for "Commission for Mental Health Services" in the second sentence and for "Commission" in the third sentence.

§ 122-70. Admissions to centers for mentally retarded. — Application for the admission of a resident person must be made by both the father and the

mother if the father and mother are living together, and if not, by the parent having custody or person standing in loco parentis, or by a duly appointed guardian of the person. Otherwise, the Commission for Mental Health and Mental Retardation Services is authorized and empowered to promulgate rules, regulations and conditions of admission of children and adults to the centers. (1963, c. 1184, s. 6; 1965, c. 800, s. 12; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the second sentence.

Commitment by Division of Youth Development. — The Division of Youth Development has no authority to commit to a center for the mentally retarded a juvenile who has been committed to the custody of the Division of Youth Development by a juvenile court. Opinion of Attorney General to Mr. James P. Smith, 44 N.C.A.G. 203 (1975).

ARTICLE 10.

Private Hospitals for the Mentally Disordered.

§ 122-72. Licensing and control of private mental institutions and homes. (b) Licenses shall be obtained annually. Every application for license hereunder shall be accompanied by a plan of the premises proposed to be occupied describing the capacities of the buildings for the uses intended, the extent and location of the grounds and the number of patients proposed to be received therein with such other information and in such form as the Department may require. The Commission for Mental Health and Mental Retardation Services shall prescribe minimum standards for each type of establishment which must be met by the applicant before the license will be granted by the Department.

(c) Hospitals, homes or schools licensed under this Article by the Department of Human Resources 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 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 Human Resources. The Department of Human Resources 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 Commission for Mental Health and Mental Retardation Services shall 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 Department of Human Resources 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 Commission for Mental Health and Mental Retardation Services.

(e) The authority to adopt standards for inspection of licensing privately operated homes or other institutions (including religious facilities) for mentally ill persons, mentally retarded persons, and inebriates shall be the responsibility of the Commission for Mental Health and Mental Retardation Services. (1899, c. 1, s. 60; Rev., s. 4600; C. S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 1166, s. 7; 1965, c. 1178, ss. 1-3; 1969, c. 954; 1973, c. 476, s. 133; 1977, c. 679, s. 7.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the third sentence of subsection (b), in the fifth sentence of subsection (c), and at the end of subsections (d) and (e).

As subsection (a) was not changed by the amendments, it is not set out.

Repeal of Section. — This section is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

ARTICLE 11.

Mentally Ill Criminals.

§ 122-83. Mentally ill persons charged with crime to be committed to facility. — All persons who may hereafter commit crime while mentally ill, and all who, being charged with crime, are adjudged to be mentally ill at the time of their arraignment, and for that reason cannot be put on trial for the crimes alleged against them, shall be sent, when it shall be ascertained by due course of law that such person is mentally ill and cannot plead, to any State mental health facility in North Carolina, and they shall be confined therein under the rules and regulations prescribed by the Commission for Mental Health and Mental Retardation Services under the authority of this Article, and they shall be treated, cared for, and maintained in said facility. 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 facilities may be employed in labor upon the farms of said facilities under such supervision as said boards of directors may direct: Provided, that the administrator and chief of medical services of the facility 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 facility shall not be regarded as punishment for any offense. (1899, c. 1, s. 63; Rev., s. 4617; C. S., s. 6236; 1923, c. 165, ss. 2, 3; 1927, c. 228; 1945, c. 952, s. 53; 1959, c. 1028, ss. 1, 2; 1963, c. 1184, s. 25; 1965, c. 929, s. 4; 1973, c. 253, s. 1; c. 476, s. 133; c. 673, s. 20; c. 1286, s. 20; 1977, c. 679, s. 7.)

Cross References. —

As to mental incapacity of defendant in criminal prosecution to proceed, see § 15A-1001 et seq.

Editor's Note. —

The fourth 1973 amendment, effective Sept. 1, 1975, deleted "by the court before whom they are or may be arraigned for trial" following "shall be sent" near the middle of the first sentence.

The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" near the end of the first sentence.

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

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

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and

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

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

There is no indication that this article was intended to constitute the entire body of law governing persons who enter State institutions by way of the criminal justice system. To the contrary, it would appear that the legislature has intended by way of § 143-117, that all persons entering State institutions, whether voluntarily or involuntarily committed, be required to pay for their confinement to the extent they are able to do so. State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 81 (1977).

Ability to Plead and Conduct Defense, etc. —

In accord with original. See State v. Thompson, 285 N.C. 181, 203 S.E.2d 781, cert. denied, 419 U.S. 867, 95 S. Ct. 123, 42 L.Ed.2d 104 (1974).

And May Be Determined, etc. —

The preliminary question of a defendant's mental capacity to plead to a bill of indictment and to aid in the preparation and conduct of his defense is properly a question to be decided by the trial judge. State v. Thompson, 285 N.C. 181, 203 S.E.2d 781, cert. denied, 419 U.S. 867, 95 S. Ct. 123, 42 L.Ed.2d 104 (1974).

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

In accord with original. See State v. Thompson, 285 N.C. 181, 203 S.E.2d 781, cert. denied, 419 U.S. 867, 95 S. Ct. 123, 42 L.Ed.2d 104 (1974).

Cited in State v. Taylor, 290 N.C. 220, 226 S.E.2d 23 (1976).

§ 122-84. Persons acquitted of certain crimes or incapable of being tried, on account of mental illness, committed to facility; return for trial; detention for treatment. — 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 session 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 administrator of a facility designated in G.S. 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 a facility designated in G.S. 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 has been determined to be incapable of proceeding as provided in Article 56 of Chapter 15A of the General Statutes and has been committed to a State hospital, if the hospital authorities feel that an outright discharge or release of said person (in the event he is subsequently tried and found not guilty),

would be harmful or dangerous to himself or the public at large involved, and that further care and treatment is necessary, said authorities will when reporting that he is able to proceed, make a request for his return for further care and treatment, in the event he is found not guilty.

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 facility in its report has requested that the defendant be returned to said facility 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 facility for care and treatment and shall require him to remain at said facility until discharged by the administrator 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; 1973, c. 108, s. 78; c. 253, s. 2; c. 673, s. 21; c. 1286, s. 21.)

Cross References. —

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

Editor's Note. —

The fourth 1973 amendment, effective Sept. 1, 1975, rewrote the second paragraph.

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

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

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

For note entitled "New Rule in North Carolina on Instructing the Jury on the Disposition of a Defendant Acquitted by Reason of Insanity," see 13 Wake Forest L. Rev. 201 (1977).

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

How Mental Capacity of Accused, etc. —

In accord with 2nd paragraph in original. See State v. Thompson, 285 N.C. 181, 203 S.E.2d 781, cert. denied, 419 U.S. 867, 95 S. Ct. 123, 42 L.Ed.2d 104 (1974).

The preliminary question of a defendant's mental capacity to plead to a bill of indictment and to aid in the preparation and conduct of his defense is properly a question to be decided by the trial judge. State v. Thompson, 285 N.C. 181, 203 S.E.2d 781, cert. denied, 419 U.S. 867, 95 S. Ct. 123, 42 L.Ed.2d 104 (1974).

The test of mental responsibility, etc. —

In accord with 3rd paragraph in original. See State v. Potter, 285 N.C. 238, 204 S.E.2d 649 (1974).

When Determination of Mental Capacity, etc. —

Whether defendant is able to plead to the indictment and conduct a rational defense should be determined prior to the trial of defendant for the crime charged in the indictment. State v. Thompson, 285 N.C. 181, 203 S.E.2d 781, cert. denied, 419 U.S. 867, 95 S. Ct. 123, 42 L.Ed.2d 104 (1974).

Cited in State v. Taylor, 290 N.C. 220, 226 S.E.2d 23 (1976).

§ 122-84.1. Acquittal of defendant on grounds of mental illness; procedure. — (a) Upon the acquittal of any criminal defendant on grounds of mental illness, the trial court shall order the defendant held under appropriate restraint pending a hearing on the issue of whether the defendant is mentally ill and imminently dangerous to himself or others, as these terms are defined in Article 5A of this Chapter. The hearing shall be conducted in accordance with the provisions of G.S. 122-58.7 except that the hearing shall be held in a courtroom and need not be closed to the public. Evidence adduced at the trial of the defendant on the criminal charges on the issue of mental illness shall be admissible at the hearing. If the hearing cannot be conducted prior to the termination of the session of court in which the criminal trial was had, it shall be calendared in the district court in the same county within 10 days. If the court finds that the

defendant-respondent is mentally ill and imminently dangerous to himself and others, it shall order him committed to a regional psychiatric facility designated by the Division of Mental Health and Mental Retardation Services for a period of not more than 90 days. The defendant shall thereafter be considered as though he had been committed initially under the provisions of Article 5A of this Chapter. If the court finds that the defendant is not mentally ill and imminently dangerous to himself or others, it shall order his discharge.

(b) The provisions of this section supersede those provisions of G.S. 122-84 which prescribe the procedures to be used in the case of a defendant acquitted of a criminal charge by reason of mental illness. (1973, c. 1437, s. 1; 1977, c. 679, s. 8.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the fifth sentence of subsection (a).

Session Laws 1973, c. 1437, s. 3, provides that the act shall become effective on the same day as Session Laws 1973, c. 1408, which rewrote Article 5A of this Chapter. Chapter 1408 was ratified April 12, 1974, and made effective 60 days after ratification.

For note entitled "New Rule in North Carolina on Instructing the Jury on the Disposition of a Defendant Acquitted by Reason of Insanity," see 13 Wake Forest L. Rev. 201 (1977).

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Trial Instructions. — While the circumstances of a particular case may justify, or require, that the trial court instruct the jury as to procedures for restraint in the event of a verdict of not guilty by reason of insanity, instructions to that effect must be in proper form and must accurately describe the law governing these procedures for restraint. State v. McMillian, 28 N.C. App. 308, 220 S.E.2d 825 (1976).

Required upon Request of Defendant Interposing Insanity Defense. — Upon request, a defendant who interposes a defense of insanity to a criminal charge is entitled to a jury instruction by the trial judge setting out in substance the commitment procedures outlined in § 122-84.1. State v. Hammonds, 290 N.C. 1, 224 S.E.2d 595 (1976); State v. Taylor, 290 N.C. 220, 226 S.E.2d 23 (1976).

Applied in State v. Sellers, 26 N.C. App. 51, 214 S.E.2d 790 (1975).

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

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

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

(d) Special counsel at a regional psychiatric facility shall represent any convict who becomes mentally ill and imminently dangerous to himself or others while confined in a penal facility in the same county. (1899, c. 1, s. 66; Rev., s. 4619; C. S., s. 6238; 1923, c. 165, s. 55; 1945, c. 952, s. 55; 1955, c. 887, s. 14; 1957, c.

1232, s. 26; 1963, c. 1184, s. 27; 1965, c. 800, s. 13; 1973, c. 253, s. 3; c. 1433; 1977, c. 679, s. 8.)

Editor's Note. —

The second 1973 amendment rewrote this section. The second amendatory act was made effective on the same date as Session Laws 1973, c. 1408, which rewrote Article 5A of this Chapter. Chapter 1408 was ratified April 12, 1974, and made effective 60 days after ratification.

The 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the last sentence of subsection (a).

Applied in In re Mostella, 25 N.C. App. 666, 215 S.E.2d 790 (1975).

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

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

Editor's Note. — Session Laws 1973, c. 1437, s. 3, provides that the act shall become effective on the same day as Session Laws 1973, c. 1408, which rewrote Article 5A of this Chapter. Chapter 1408 was ratified April 12, 1974, and made effective 60 days after ratification.

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

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

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

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

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

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

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

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

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§§ 122-88, 122-89: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

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

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

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

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

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

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

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

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

15-176.5] of this act which becomes effective on July 1, 1974."

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 12.

John Umstead Hospital.

§ 122-93. Disposition of surplus real property. — Disposition of surplus real property at Camp Butner shall be made in accordance with the procedures outlined in Chapter 146 of the General Statutes of North Carolina. (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; 1973, c. 476, s. 133; 1975, c. 119.)

Editor's Note. — The 1975 amendment rewrote this section.

ARTICLE 13.

Interstate Compact on Mental Health.

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

A transfer of a patient involuntarily committed to another state not having equivalent due process safeguards in the form of mandatory, periodic judicial rehearings is not prohibited although the existence of adequate due process safeguards in the receiving state should be an important factor for consideration in determining the appropriateness of the transfer of the patient. — See Opinion of Attorney General to Mr. John L. Pinnix, 5 August 1975.

Chapter 122A.

North Carolina Housing Finance Agency.

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

Editor's Note. — The 1973 amendment substituted "Finance Agency" for "Corporation" in the title of the act.

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

§ 122A-2. Legislative findings and purposes. — The General Assembly hereby finds and declares that as a result of the spread of slum conditions and blight to formerly sound urban and rural neighborhoods and as a result of actions involving highways, public facilities and urban renewal activities there exists in the State of North Carolina a serious shortage of decent, safe and sanitary residential housing available at low prices or rentals to persons and families of lower income. This shortage is severe in certain urban areas of the State, is especially critical in the rural areas, and is inimical to the health, safety, welfare and prosperity of all residents of the State and to the sound growth of North Carolina communities.

The General Assembly hereby finds and declares further that private enterprise and investment have not been able to produce, without assistance, the needed construction of decent, safe and sanitary residential housing at low prices or rentals which persons and families of lower income can afford, or to achieve the urgently needed rehabilitation of much of the present lower income housing. It is imperative that the supply of residential housing for persons and families of lower income affected by the spread of slum conditions and blight and for persons and families of lower income displaced by public actions or natural disaster be increased; and that private enterprise and investment be encouraged to sponsor, build and rehabilitate residential housing for such persons and families, to help prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout North Carolina.

The General Assembly hereby finds and declares further that the purposes of this Chapter are to provide financing for residential housing construction, new or rehabilitated, for sale or rental to persons and families of lower income.

The General Assembly hereby finds and declares further that in accomplishing this purpose, the North Carolina Housing Finance Agency, a public agency and an instrumentality of the State, is acting in all respects for the benefit of the

people of the State in the performance of essential public functions and serves a public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the North Carolina Housing Finance Agency, is empowered to act on behalf of the State of North Carolina and its people in serving this public purpose for the benefit of the general public.

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

The General Assembly hereby also further finds and declares that private enterprise and investment have not been able to provided, without assistance, the needed installation of energy saving materials in owner occupied residences of persons and families of lower income. It is imperative for the health, safety and welfare of these persons and the general public that their residences be suitably heated at affordable cost in order to provide decent housing; and that the consumption of nonrenewable sources of energy be reduced. Therefore, the General Assembly finds that one of the purposes of this Chapter is to assist persons and families of lower income to obtain loans for the purpose of heating their homes at affordable cost and at the same time to significantly reduce the amount of consumption of nonrenewable sources of energy. (1969, c. 1235, s. 2; 1973, c. 1296, s. 2; 1977, c. 1083, s. 1.)

Editor's Note. — The 1973 amendment deleted "development costs, land development and" following "financing for" in the third paragraph, substituted "Agency" for "Corporation" in two places in the fourth paragraph and added the next-to-last paragraph.

The 1977 amendment, effective Sept. 1, 1977, added the last paragraph.

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

§ 122A-3. Definitions. — The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

(1) "Bonds" or "notes" means the bonds or bond anticipation notes authorized to be issued by the Agency under this Chapter;
(2) "Agency" means the North Carolina Housing Finance Agency created by this Chapter;
(3) Repealed by Session Laws 1973, c. 1296, s. 5;
(4) Repealed by Session Laws 1973, c. 1296, s. 6;
(5) "Governmental agency" means any department, division, public agency, political subdivision or other public instrumentality of the State, the federal government, any other State or public agency, or any two or more thereof;
(6) Repealed by Session Laws 1973, c. 1296, s. 8;
(7) Repealed by Session Laws 1973, c. 1296, s. 9;
(8) "Mortgage" or "mortgage loan" means a mortgage loan for residential housing, including a mortgage loan insured or guaranteed by the United States or an instrumentality thereof or for which there is a commitment by the United States or an instrumentality thereof to insure such a mortgage;

(9) Repealed by Session Laws 1973, c. 1296, s. 11;
(10) "Obligations" means any bonds or bond anticipation notes authorized to be issued by the Agency under the provisions of this Chapter;
(11) "Persons and families of lower income" means persons and families deemed by the Agency to require such assistance as is made available by this Chapter on account of insufficient personal or family income, taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available, (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a lower income basis and (v) the ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing and deemed by the Agency therefore to be eligible to occupy residential housing financed wholly or in part, with mortgages, or with other public or private assistance;
(12) "Residential housing" means a specific work or improvement undertaken primarily to provide dwelling accommodations for persons and families of lower income, including the rehabilitation of buildings and improvements, and such other nonhousing facilities as may be incidental or appurtenant thereto;
(13) "State" means the State of North Carolina;
(14) "Federally insured securities" means an evidence of indebtedness secured by a first mortgage lien on residential housing for persons of lower income and insured or guaranteed as to repayment of principal and interest by the United States or any agency or instrumentality thereof; and
(15) "Mortgage lenders" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association, life insurance company, mortgage banking company, the federal government and any other financial institution authorized to transact business in the State.
(16) "Energy conservation loan" means a loan obtained from a mortgage lender for the purpose of satisfying an existing obligation of a borrower who is the resident owner of a single family dwelling or of "residential housing." The existing obligation of the owner in an "energy conservation loan" must have been incurred to pay for the purchase of materials or the installation of materials, or both, which results in a significant decrease in the amount of consumption of nonrenewable sources of energy in order to provide or maintain a comfortable level of room temperatures in his residence during the winter. "Energy conservation loan" does not include a loan obtained to refinance an existing loan agreement unless payment or collection of the original loan was guaranteed by the agency. (1969, c. 1235, s. 3; 1973, c. 1296, ss. 3-6, 8-14, 16, 17; 1975, c. 19, s. 42; 1977, c. 1083, s. 2.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" throughout the section. The amendment also deleted "but shall not include any fund notes" at the end of subdivision (1) and repealed subdivisions (3), defining "development costs," (4), defining "fund notes," (6), defining "housing development fund," (7), defining "insured construction loan" and (9), defining "land development." In subdivision (8), the amendment deleted "Insured" preceding "mortgage" at the beginning of the subdivision and "insured" preceding "mortgage loan" where that phrase first appears and inserted "including a mortgage loan." In subdivision (10), the amendment substituted "bonds or bond anticipation notes" for "bonds, bond anticipation notes or fund notes." In subdivision (11), the amendment deleted "such factors as" preceding "(i)," and "constructed and" preceding

"financed" and "insured construction loans or insured" preceding "mortgages" near the end of this subdivision. In subdivision (12), the amendment substituted "rehabilitation of buildings and improvements" for "acquisition, construction or rehabilitation of land, buildings and improvements thereto" and deleted "and" at the end of the subdivision. The amendment also added subdivisions (14) and (15).

The 1975 amendment corrected an error by substituting "for" for "by" preceding "which" in subdivision (8).

The 1977 amendment, effective Sept. 1, 1977, added subdivision (16).

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

§ 122A-4. North Carolina Housing Finance Agency. — There is hereby created a body politic and corporate to be known as "North Carolina Housing Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The Agency shall be governed by a Board of Directors composed of 14 members. One member shall be the Secretary of the Department of Natural Resources and Community Development serving ex officio. Four of the members of said Board shall be members of the General Assembly, two from each house thereof, the two members from the Senate to be appointed by the President of the Senate and the two members from the House to be appointed by the Speaker of the House. The remaining directors of the Agency shall be residents of the State and shall not hold other public office. The President of the Senate also shall appoint one director who shall be experienced with a savings and loan institution and one director who shall be experienced in home building. The Speaker of the House also shall appoint one director who shall have had experience with a mortgage-servicing institution and one director who shall be experienced as a licensed real estate broker. The Governor shall appoint four of the directors of the Agency; one of such appointees shall be experienced in community planning, one shall be experienced in subsidized housing management, one shall be experienced as a specialist in public housing policy, and one shall be experienced in the manufactured housing industry. The eight nonlegislative directors of the Agency thus appointed shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and Speaker of the House, respectively, two for two years, by the President of the Senate and by the Speaker of the House, respectively, two for three years and two for four years, respectively, as designated by the Governor, and shall continue in office until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Board of Directors shall be eligible for reappointment. The four directors who are members of the General Assembly shall be appointed for a term of two years. The 13 members of the Board shall then elect a fourteenth member to the Board by simple majority vote. Each nonlegislative member of the Board of Directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each nonlegislative member of the Board of Directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the Board a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then current terms as members of the Board of Directors of the Agency. The Secretary of Natural Resources and Community Development or his designee shall serve as secretary of the Board. The Agency shall be placed within the Department of Natural Resources and Community Development; provided, however, that the approval of the Secretary of Natural Resources and Community Development shall not be required for the exercise by the Agency of any of the powers granted by this

Chapter. The Board of Directors shall, subject to the approval of the Secretary of the Department of Natural Resources and Community Development, elect and appoint and prescribe the duties of such other officers as it shall deem necessary or advisable, and the Advisory Budget Commission shall fix the compensation of such officers. All personnel employed by the Agency shall be subject to the State Personnel Act and the books and records of the Agency shall be subject to audit by the State.

No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Agency shall receive no compensation for their services but shall be entitled to receive, from funds of the Agency, for attendance at meetings of the Agency or any committee thereof and for other services for the Agency reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

The executive director shall administer, manage and direct the affairs and business of the Agency, subject to the policies, control and direction of the members of the Agency Board of Directors. The secretary of the Agency shall keep a record of the proceedings of the Agency and shall be custodian of all books, documents and papers filed with the Agency, the minute book or journal of the Agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Agency and to give certificates under the official seal of the Agency to the effect that such copies are true copies, and all persons dealing with the Agency may rely upon such certificates. Seven members of the Board of Directors of the Agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the Board of Directors duly called and held shall be necessary for any action taken by the Board of Directors of the Agency, except adjournment; provided, however, that the Board of Directors may appoint an executive committee to act in behalf of said Board during the period between regular meetings of said Board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency. (1969, c. 1235, s. 4; 1973, c. 476, s. 128; c. 1262, ss. 51, 86; c. 1296, ss. 18-20; 1975, c. 19, s. 43; 1977, c. 673, s. 4; c. 771, s. 4.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" and "Secretary of the Department of Natural and Economic Resources" for "Director of the Department of Local Affairs" in the second sentence of the first paragraph as it stood before the third 1973 amendment.

The third 1973 amendment rewrote the first paragraph, substituted "Agency" for "Corporation" throughout the second and third paragraphs, deleted "only as to the members appointed by the Governor" preceding "such per diem" near the end of the second paragraph and rewrote the next-to-last sentence of the third paragraph.

The 1975 amendment corrected an error in the third 1973 amendatory act by substituting "public housing policy" for "housing public policy" in the seventh sentence of the first paragraph.

The first 1977 amendment rewrote the first paragraph. Among other changes, the amendment increased the membership from 13 to 14, added the provision for an ex officio member, and substituted references to the Department of Natural and Economic Resources and to the Secretary of the Department of Natural and Economic Resources for references to the Department of the Treasurer and to the Treasurer.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the first paragraph as rewritten by the first 1977 amendment.

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

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

State Government Reorganization. — The North Carolina Housing Finance Agency was transferred to the Department of Natural Resources and Community Development by a Type II transfer by Session Laws 1977, c. 673, s. 1.

§ 122A-5. General powers. — The Agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

(1) To participate in any federally assisted lease program for housing for persons of lower income under any federal legislation, including, without limitation, section 8 of the National Housing Act; provided, however, that such participation may take place only upon the request and approval of the governing body of the county, city or town in which any such project is to be located;

(2) To make or participate in the making of mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the Agency that mortgage loans are not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;

(3) To purchase or participate in the purchase and enter into commitments by itself or together with others for

a. The purchase of mortgage loans made by mortgage lenders to sponsors of residential housing or to persons of lower income for residential housing where the agency has given its approval prior to the initial making of the mortgage loan; provided, however, that any such purchase shall be made only upon the determination by the agency that mortgage loans were, at the time the approval was given, not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions, or

b. The purchase of mortgage loans made by mortgage lenders without such prior approval to sponsors of housing for persons and families of any income or to persons of any income for housing upon such terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new mortgage loans to sponsors of residential housing or to persons of lower income for residential housing as the agency may prescribe by its rules and regulations; provided, however, that (i) any such purchase of existing mortgage loans shall be made only upon the determination by the agency that such new mortgage loans are not otherwise available from private lenders upon reasonably equivalent terms and conditions, and (ii) the agency shall purchase mortgage loans made to sponsors of housing for persons and families not of lower income or to persons not of lower income for housing only upon the determination by the agency that mortgage loans made to sponsors of residential housing or to persons of lower income for residential housing are not available for purchase by the agency upon reasonable terms and conditions.

(4) Repealed by Session Laws 1973, c. 1296, s. 24;

(5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments and other evidences of indebtedness;

(6) To acquire on a temporary basis real property, or an interest therein, in its own name, by purchase, transfer or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the Agency has an interest and to sell, transfer and convey any such property to a buyer and, in the event such sale, transfer or conveyance

cannot be effected with reasonable promptness or at a reasonable price, to rent or lease such property to a tenant pending such sale, transfer or conveyance;

(7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a loan of any type permitted by this Chapter;

(8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;

(9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, contract or agreement of any kind to which the Agency is a party;

(10) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue its obligation as evidence of any such borrowing;

(11) To include in any borrowing such amounts as may be deemed necessary by the Agency to pay financing charges, interest on the obligations for a period not exceeding two years from their date, consultant, advisory and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;

(13) To provide technical and advisory services to sponsors, builders and developers of residential housing and to residents thereof;

(14) To promote research and development in scientific methods of constructing low-cost residential housing of high durability;

(15) To service or contract for the servicing of mortgage loans and to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under this Chapter, including contracts with any person, firm, corporation, governmental agency or other entity, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the Agency to facilitate the purposes of this Chapter;

(16) To receive, administer and comply with the conditions and requirements respecting any appropriation or any gift, grant or donation of any property or money, including the proceeds of general obligation bonds of the State;

(17) To sue and be sued in its own name, plead and be impleaded;

(18) To maintain an office in the City of Raleigh and at such other place or places as it may determine;

(19) To adopt an official seal and alter the same at pleasure;

(20) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(21) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the Agency and to fix and pay their compensation from funds available to the Agency therefor;

(22) To purchase or to participate in the purchase and enter into commitments by itself or together with others for the purchase of federally insured securities; provided, however, that the Agency shall first determine that the proceeds of such securities will be utilized for the purpose of making new mortgage loans to sponsors of residential

housing or to persons of lower income for residential housing, all as specified in regulations to be adopted by the Agency; and

(23) To provide, or contract for the providing of, management and counseling services whenever, in the judgment of the Agency, no other satisfactory low-income housing counseling service is available for occupants of rental projects for persons of lower income or for prospective homeowners of lower income; provided, however, that no such program shall be undertaken until the Agency shall have made a study of its feasibility and shall have determined that the undertaking of such program will not adversely affect other programs of the Agency. (1969, c. 1235, s. 5; 1973, c. 1296, ss. 21-24, 27, 29, 35, 36, 40-43; 1975, c. 616, ss. 1, 2.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" throughout the section. The amendment also rewrote subdivisions (1) and (3), deleted "insured" preceding "mortgage loans" near the beginning of subdivision (2), repealed subdivision (4), which read "To make temporary loans from the housing development fund," deleted "construction, land development, mortgage or temporary" preceding "loan" in subdivision (7) and "construction loan, temporary loan," following "commitment," near the end of subdivision (9), added "To service or contract for the servicing of mortgage loans and" at the beginning of subdivision (15), added "including the proceeds of general obligation bonds of the State" at the end of subdivision (16), deleted "and" at the end of subdivision (20) and added subdivisions (22) and (23).

The 1975 amendment substituted "section 8" for "section 23" in subdivision (1), rewrote the former provisions of subdivision (3) as the introductory paragraph and paragraph a of that subdivision and added paragraph b of subdivision (3).

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

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

(1) Procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans or for the purchase of federally insured securities;

(2) Limitations or restrictions as to the number of family units, location or other qualifications or characteristics of residences to be financed by mortgage loans and requirements as to the income limits of persons and families of lower income occupying such residences;

(3) Restrictions as to the interest rates on mortgage loans or the return which may be realized by mortgage lenders on any mortgage loans or on the sale of federally insured securities to the Agency;

(4) Requirements as to commitments by mortgage lenders with respect to the use of the proceeds of sale of any federally insured securities;

(5) Schedules of any fees and charges necessary to provide for expenses and reserves of the Agency; and

(6) Any other matters related to the duties and the exercise of the powers of the Agency to purchase and sell mortgage loans, or to purchase federally insured securities.

Such rules and regulations shall be designed to effectuate the general purposes of this Chapter and the following specific objectives: (i) the construction of decent, safe and sanitary residential housing at low prices or rentals which persons and families of lower income can afford; (ii) the rehabilitation of present lower-income housing; (iii) increasing the supply of residential housing for persons and families of lower income affected by the spread of slum conditions and blight and for persons and families of lower

income displaced by public action or natural disaster; (iv) the encouraging of private enterprise and investment to sponsor, build and rehabilitate residential housing for such persons and families to prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout the State; and (v) the restriction of the financial return and benefit to that necessary to protect against the realization by mortgage lenders of an excessive financial return or benefit as determined by prevailing market conditions.

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

(c) The Agency shall require as a condition of the purchase of federally insured securities from a mortgage lender and the purchase or the making of a commitment to purchase mortgage loans from a mortgage lender where the Agency has not given its approval prior to the initial making of the mortgage loan that such mortgage lender shall on or prior to the one-hundred-eightieth day (or such earlier day as may be prescribed by rules and regulations of the Agency) following the receipt of the sale proceeds have entered into written commitments to make, and shall thereafter proceed as promptly as practicable to make from such sale proceeds, new mortgage loans with respect to residential housing in the State having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such sale proceeds. The Agency shall not purchase nor make commitment to purchase mortgage loans, federally insured securities or other obligations from a mortgage lender from which it has previously purchased federally insured securities or mortgage loans initially made without such prior approval unless said mortgage lender has either made or entered into written commitments to make such new mortgage loans. (1973, c. 1296, s. 44; 1975, c. 616, s. 3.)

Editor's Note. — The 1975 amendment rewrote subsection (c).

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

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

The aggregate principal amount of all mortgages so insured by the Agency under this Chapter and outstanding at any one time shall not exceed 10 times the average annual balance for the preceding calendar year of funds on deposit in the housing mortgage insurance fund, the creation of which is hereby authorized. The aggregate amount of principal obligations of all mortgages so insured shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from moneys on deposit to the credit of the housing mortgage insurance fund. Any contract of insurance executed by the Agency under this section shall be conclusive evidence of eligibility for such mortgage insurance and the validity of any contract of insurance so executed or of an advance commitment to issue such shall be incontestable in the hands of a mortgagee from the date of execution of such contract or commitment, except for fraud or

misrepresentation on the part of such mortgagee and, as to commitments to insure, noncompliance with the terms of the advance commitment or Agency regulations in force at the time of issuance of the advance commitment.

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

(1) Be one which is made and held by a mortgagee approved by the Agency as responsible and able to service the mortgage properly;

(2) Not exceed (i) ninety percent (90%) of the estimated cost of the proposed housing if owned or to be owned by a profit-making sponsor or (ii) one hundred percent (100%) of the estimated cost of such proposed housing if owned or to be owned by a nonprofit housing sponsor or, if owned by a person or family of lower income, in the case of a single family dwelling or condominium;

(3) Have a maturity satisfactory to the Agency but in no case longer than eighty percent (80%) of the Corporation's estimate of the remaining useful life of said housing or 40 years from the date of the issuance of insurance, whichever is earlier;

(4) Contain amortization provisions satisfactory to the Agency requiring periodic payments by the mortgagor not in excess of his ability to pay as determined by the Agency;

(5) Be in such form and contain such terms and provisions with respect to maturity, property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, equitable and legal redemption rights, prepayment privileges and other matters as the Agency may prescribe.

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

(d) The Agency shall fix mortgage insurance premiums for the insurance of mortgage payments under the provision of this Chapter. Such premiums shall be computed as a percentage of the principal of the mortgage outstanding at the beginning of each mortgage year, but shall not be more than one half of one percent (½ of 1%) per year of such principal amount. The amount of premium need not be uniform for all insured loans. Such premiums shall be payable by mortgagors or mortgagees in such manner as prescribed by the Agency.

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

(1) Any sale of the mortgaged property by court order in foreclosure or a sale with the consent of the Agency by the mortgagor or a subsequent owner of the property or by the mortgagee after foreclosure or acquisition by deed in lieu of foreclosure, provided all claims of the mortgagee against the mortgagor or others arising from the mortgage,

foreclosure, or any deficiency judgment shall be assigned to the Agency without recourse except such claims as may have been released with the consent of the Agency; or

(2) The expiration of six months after the mortgagee has taken title to the mortgaged property under judgment of strict foreclosure, foreclosure by sale or other judicial sale, or under a deed in lieu of foreclosure if during such period the mortgagee has made a bona fide attempt to sell the property, and thereafter conveys the property to the Agency with an assignment, without recourse, to the Agency of all claims of the mortgagee against the mortgagor or others arising out of the mortgage foreclosure, or deficiency judgment; or

(3) The acceptance by the Agency of title to the property or an assignment of the mortgage, without recourse to the Agency, in the event the Agency determines it imprudent to proceed under (1) or (2) above.

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

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

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

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

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

§ 122A-5.3. Energy conservation loan authority. — (a) The Agency may guarantee the payment or collection of energy conservation loans pursuant to and in accordance with the provisions of this Chapter when the Agency has given its approval prior to the initial making of the loan; provided that any such guarantee shall be made only upon determination by the Agency that energy conservation loans were at the time of approval not otherwise available from private lenders upon reasonably equivalent terms and conditions; and provided further, no single guarantee of payment or collection shall exceed the sum of twelve hundred dollars ($1200) and no person or family of lower income shall be entitled to more than one loan guarantee.

(b) At no time may the Agency have outstanding loan guarantees in which the liability of the Agency exceeds 15 times any amounts remaining unspent from the specific funds appropriated by the General Assembly for the energy conservation loan guarantee program plus any specific grants or donations for

this purpose; but the Agency is authorized to expend any unspent amounts from these sources to satisfy its liabilities under the loan guarantee program; provided no other assets of the Agency shall be obligated or expended in satisfaction of its energy conservation loan guarantee liability.

(c) The Agency shall from time to time adopt, modify, or repeal rules and regulations governing the guaranteeing of energy conservation loans including rules and regulations as to any or all of the following:

(1) Procedures for the submission and approval of requests to guarantee energy conservation loans including advance commitments by the Agency to guarantee loans;

(2) Limitations and restrictions on the number of family units, location or other qualifications or characteristics of residences in regard to which energy conservation work is performed to qualify for a loan guarantee;

(3) Restrictions as to interest rates on energy conservation loans or the return which may be realized by mortgage lenders on energy conservation loans guaranteed by the Agency;

(4) Schedules of any fees and charges necessary to provide for the administrative expenses of the agency allocable to the administration of the energy conservation loan guarantee program;

(5) Procedures regarding the servicing of energy conservation loan guarantees including procedures for honoring defaults and procedures to be implemented to enforce the obligations of the borrowers to repay guaranteed energy conservation loans;

(6) Any other matters related to the duties and the exercise of the power of the Agency with respect to the energy conservation loan guarantee program deemed necessary to effectuate the purposes of this act. (1977, c. 1083, s. 3.)

Editor's Note. — Session Laws 1977, c. 1083, s. 7, makes this section effective Sept. 1, 1977.

§ 122A-6. Credit of State not pledged. — Obligations issued under the provisions of this Chapter shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues or assets of the Agency. Each obligation issued under this Chapter shall contain on the face thereof a statement to the effect that the Agency shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

Expenses incurred by the Agency in carrying out the provisions of this Chapter may be made payable from funds provided pursuant to this Chapter and no liability shall be incurred by the Agency hereunder beyond the extent to which moneys shall have been so provided. Provided the provisions of this section do not apply to the liability of the agency with respect to energy conservation loan guarantees. (1969, c. 1235, s. 6; 1973, c. 1296, s. 46; 1977, c. 1083, s. 4.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" throughout the section.

The 1977 amendment, effective Sept. 1, 1977, added the second sentence of the second paragraph.

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

§ 122A-6.1. Credit of State not pledged to satisfy liabilities under energy conservation loan guarantees. — Energy conservation loan guarantees issued under the provisions of this Chapter shall not be deemed to constitute a debt, liability, obligation of the State or of any political subdivision thereof, or a pledge of the faith and credit of the State or of any political subdivision thereof, but shall be payable solely from any unspent specific appropriations by the General Assembly for the energy conservation loan guarantee program and any donations and grants for this specific purpose. Each guarantee issued by the Agency shall contain on its face a statement to the effect that the Agency shall not be obligated to pay the same nor the interest thereon except from the unspent specific appropriations by the General Assembly for the energy conservation loan guarantee program and any specific donations and grants for this purpose, 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 guarantees.

Provided any recoveries from the borrower or others which ultimately reduce the amounts paid out by the Agency in satisfaction of its liabilities under the energy conservation loan guarantee program shall be deemed unspent appropriations, donations or grants. (1977, c. 1083, s. 5.)

Editor's Note. — Session Laws 1977, c. 1083, s. 7, makes this section effective Sept. 1, 1977.

Section 6 of Session Laws 1977, c. 1083, which added this section and § 122A-5.3 and amended §§ 122A-2, 122A-3 and 122A-6, made an appropriation for the purpose of guaranteeing energy conservation loans in accordance with the provisions of the act. Section 6 futher provides: "The agency is authorized to pay the expenses of administering the provisions of this act from the investment income on the unspent balance of the funds herein appropriated and on any specific grants or donations."

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

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

§ 122A-8. Bonds and notes. — The Agency is hereby authorized to provide for the issuance, at one time or from time to time, of not exceeding two hundred million dollars ($200,000,000) bonds of the Agency to carry out and effectuate its corporate purposes; provided, however, that not more than fifty million dollars ($50,000,000) bonds shall be issued prior to June 30, 1971. In anticipation of the issuance of such bonds, the Agency also is hereby authorized to provide for the issuance, at one time or from time to time, of bond anticipation notes; provided, however, that prior to June 30, 1971, the total amount of bonds and bond anticipation notes outstanding at any one time shall not exceed fifty million dollars ($50,000,000) excluding therefrom any bond anticipation notes for the payment of which bonds shall have been issued. The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or assets of the Agency. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Agency at such price or prices and under such terms and conditions as may be determined by the Agency. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the

Agency. The Agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the Agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the filing with the Local Government Commission of North Carolina of a resolution of the Agency requesting that its bonds and notes be sold, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as said Commission shall determine to be for the best interest of the Agency and best effectuate the purposes of this Chapter provided that such sale shall be approved by the Agency.

The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the Agency may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement hereinafter mentioned securing the same.

Prior to the preparation of definitive bonds, the Agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Agency may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

Bonds or notes may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. (1969, c. 1235, s. 8; 1973, c. 1296, s. 48.)

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

§ 122A-8.1. Powers of the State Treasurer. — Notwithstanding any other provisions of this act, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the act upon request of the Agency and with the approval of the Local Government Commission.

The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this act.

The North Carolina Housing Finance Agency shall determine when a bond issue is indicated. The Agency shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys.

The State Treasurer shall have the exclusive power to employ and designate the financial consultants, underwriters, and bond attorneys to be associated with the bond issue.

The Advisory Budget Commission shall provide to the State Treasurer the funds necessary to defray the costs incurred in performing the fiscal functions reserved to the Treasurer under this act from the funds allocated to the Agency pursuant to the 1975 Session Laws.

Nothing in this act is intended to abrogate or diminish the inherent power of the State Treasurer to negotiate the terms and conditions of the bonds and notes, and to issue the bonds and notes authorized by General Statutes Chapter 122A. (1977, c. 673, s. 5.)

§ 122A-9. Trust agreement or resolution. — In the discretion of the Agency any obligations issued under the provisions of this Chapter may be secured by a trust agreement by and between the Agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such obligations may pledge or assign all or any part of the revenues or assets of the Agency, including, without limitation, mortgage loans, mortgage loan commitments, contracts, agreements and other security or investment obligations, the fees or charges made or received by the Agency, the moneys received in payment of loans and interest thereon and any other moneys received or to be received by the Agency. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such obligations as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Agency in relation to the purposes to which obligation proceeds may be applied, the disposition or pledging of the revenues or assets of the Agency, the terms and conditions for the issuance of additional obligations, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of obligations, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Agency. Any such trust agreement or resolution may set forth the rights and remedies of the holders of any obligations and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Agency may deem reasonable and proper for the security of the holders of any obligations. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on obligations or from any other funds available to the Agency. (1969, c. 1235, s. 9; 1973, c. 1296, s. 49.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" throughout the section and deleted "construction loans, temporary loans," following "commitments," near the middle of the second sentence.

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

§ 122A-10. Validity of any pledge. — The pledge of any assets or revenues of the Agency to the payment of the principal of or the interest on any obligations of the Agency shall be valid and binding from the time when the pledge is made and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Agency, irrespective of whether such parties have notice thereof. Nothing herein shall be construed to prohibit the Agency from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such obligations. (1969, c. 1235, s. 10; 1973, c. 1296, s. 50.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" throughout the section.

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

§ 122A-11. Trust funds. — Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Agency may be invested as provided in G.S. 159-28.1. (1969, c. 1235, s. 11; 1973, c. 1296, s. 51.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" in the last sentence.

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

§ 122A-12. Remedies. — Any holder of obligations issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such obligations, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Agency pursuant to this Chapter, and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution to be performed by the Agency or by any officer thereof. (1969, c. 1235, s. 12; 1973, c. 1296, s. 52.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" in two places near the end of the section.

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

§ 122A-15. Refunding obligations. — The Agency is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Agency, for any corporate purpose of the Agency. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Agency in respect of the same shall be governed by the provisions of this Chapter which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this Chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1965, c. 1235, s. 15; 1973, c. 1296, s. 55.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" throughout the section.

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

§ 122A-16. Oversight by committees of General Assembly; annual reports. — The Finance Committee of the House of Representatives and the Finance Committee of the Senate shall exercise continuing oversight of the Agency in order to assure that the Agency is effectively fulfilling its statutory purpose; provided, however, that nothing in this Chapter shall be construed as required by the Agency to receive legislative approval for the exercise of any of the powers granted by this Chapter. The Agency shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, Secretary of the Department of Natural Resources and Community Development, State Auditor, the aforementioned committees of the General Assembly, the Advisory Budget Commission and the Local Government Commission. Each such report shall set forth a complete operating and financial statement of the Agency during such year. The Agency shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Agency. (1969, c. 1235, s. 16; 1973, c. 1296, s. 56; 1977, c. 673, s. 3; c. 771, s. 4.)

Editor's Note. — The 1973 amendment added the first sentence, substituted "Agency" for "Corporation" throughout the second, third and fourth sentences and inserted "State Treasurer" and "the aforementioned committees of" in the second sentence.

The first 1977 amendment substituted "Secretary of Natural and Economic Resources" for "State Treasurer" in the second sentence.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic

Resources" in the second sentence as amended by the first 1977 amendment.

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

§ 122A-17. Officers not liable. — No member or other officer of the Agency shall be subject to any personal liability or accountability by reason of his execution of any obligations or the issuance thereof. (1969, c. 1235, s. 17; 1973, c. 1296, s. 57.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation."

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

§ 122A-18. Authorization to accept appropriated moneys. — The Agency is authorized to accept such moneys as may be appropriated from time to time by the General Assembly for effectuating its corporate purposes including, without limitation, the payment of the initial expenses of administration and operation and the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of the Agency. (1969, c. 1235, s. 18; 1973, c. 1296, s. 58.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" in two places.

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

§ 122A-19. Tax exemption. — The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Agency shall not be required to pay any tax or assessment on any property owned by the Agency under the provisions of this Chapter or upon the income therefrom.

Any obligations issued by the Agency under the provisions of this Chapter, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1969, c. 1235, s. 19; 1973, c. 1296, s. 59.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" throughout the section.

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

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

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" throughout the section.

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

Chapter 123.

Impeachment.

Article 1.

The Court.

ARTICLE 1.

The Court.

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

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

Chapter 125.

Libraries.

Article 1.
State Library Agency.

Sec.

§ 125-2. Powers and duties of Department of Cultural Resources. — The Department of Cultural Resources shall have the following powers and duties:

(10) To plan and coordinate cooperative programs between the various types of libraries within the State of North Carolina, and to coordinate State development with regional and national cooperative library programs.

(1977, c. 645, s. 1.)

Editor's Note. — The 1977 amendment added subdivision (10). As the other subdivisions were not changed by the amendment, only the introductory language and subdivision (10) are set out.

§ 125-9. Librarian certification.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 125-10. Temporary certificates for public librarians.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

Chapter 126.

State Personnel System.

Article 1.

State Personnel System Established.

Article 2.

Salaries and Leave of State Employees.

Article 3.

Local Discretion as to Local Government Employees.

Article 6.

Equal Employment Opportunity Assisting in Obtaining State Employment.

Article 7.

The Privacy of State Employee Personnel Records.

Article 8.

Employee Appeals of Grievances and Disciplinary Action.

Article 9.

The Administrative Procedure Act and Modifications.

Article 10.

Interchange of Governmental Employees.

ARTICLE 1.

State Personnel System Established.

§ 126-1. Purpose of Chapter; application to local employees.

The legislative intent to forbid all hiring except under this Chapter is clear. Bean v. Taylor, 408 F. Supp. 614 (M.D.N.C. 1976, aff'd, 534 F.2d 328 (4th Cir. 1976).

Frustration of Purpose and Public Policy. — The purpose of this Chapter and thus public policy would be frustrated by enforcement of contracts made in violation of the valid rules established pursuant to § 126-4(3). Bean v. Taylor, 408 F. Supp. 614 (M.D.N.C. 1976), aff'd, 534 F.2d 328 (4th Cir. 1976).

Cited in Faulkner v. North Carolina Dep't of Corrections, 428 F. Supp. 100 (W.D.N.C. 1977).

§ 126-2. State Personnel Commission. — (a) There is hereby established the State Personnel Commission (hereinafter referred to as "the Commission").

(b) The Commission shall consist of seven members who shall be appointed by the Governor on July 1, 1965, or as soon thereafter as is practicable. Two members of the Commission shall be chosen from employees of the State subject to the provisions of this Chapter; two members shall be appointed from a list of individuals nominated by the North Carolina association of county commissioners; two members shall be individuals actively engaged in the management of a private business or industry; and one member shall be appointed from the public at large. Of the initial members of the Commission, two shall be appointed to serve for terms of two years, two shall be appointed to serve for terms of four years, and three shall be appointed to serve for terms of six years. Their successors shall be appointed by the Governor for terms of six years. Any vacancy occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(c) Members of the Commission appointed after February 1, 1976, shall be appointed subject to confirmation by the General Assembly of North Carolina. If the General Assembly is not in session when an appointment is made, the appointee shall temporarily exercise all of the powers of a confirmed member until the convening of the next legislative session. If the General Assembly does not act on confirmation of a proposed member within 30 legislative days of the submission of the name, the member shall be considered confirmed. If the Governor does not appoint a new member within 60 calendar days of the occurrence of a vacancy or the rejection of an appointment by the General Assembly, the remaining members of the Board shall have the authority to fill the vacancy.

(d) The Governor may at any time after notice and hearing remove any Commission member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(e) Members of the Commission who are employees of the State subject to the provisions of this Article shall be entitled to administrative leave without loss of pay for all periods of time required to conduct the business of the Commission.

(f) Four members of the Commission shall constitute a quorum.

(g) The Governor shall designate one member of the Commission as chairman.

(h) The Commission shall meet quarterly, and at other times at the call of the chairman. (1965, c. 640, s. 2; 1975, c. 667, ss. 2-4.)

Editor's Note. —
The 1975 amendment, effective Feb. 1, 1976, rewrote subsection (c), substituted "Four" for "Five" in subsection (f) and substituted "Commission" for "Board" throughout the section.

Cited in Nantz v. Employment Security Comm'n, 290 N.C. 473, 226 S.E.2d 340 (1976).

§ 126-3. Office of State Personnel established; administration and supervision; appointment, compensation and tenure of Director. — There is hereby established the Office of State Personnel (hereinafter referred to as "the Office") which shall be placed for organizational purposes within the Department of Administration. Notwithstanding the provisions of North Carolina State government reorganization as of January 1, 1975, and specifically notwithstanding the provisions of Chapter 864 of the 1971 North Carolina Session Laws [Chapter 143A], the Office of State Personnel shall exercise all of its statutory powers in this Chapter independent of control by the Secretary of Administration and shall be under the administration and supervision of a State Personnel Director (hereinafter referred to as "the Director") appointed by the Governor and subject to the supervision of the Commission for purposes of this Chapter. The salary of the Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Director shall serve at the pleasure of the Governor. (1965, c. 640, s. 2; 1975, c. 667, s. 5.)

Editor's Note. — The 1975 amendment, effective Feb. 1, 1976, rewrote this section.

§ 126-4. Powers and duties of State Personnel Commission. — Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

(1) A position classification plan which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

(2) A compensation plan which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.

(3) For each class of positions, reasonable qualifications, as to age, character, physical condition, and other attributes pertinent to the work to be performed.

(4) A recruitment program to attract applicants to public employment and determine the relative fitness of applicants for the respective positions.

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment.

(6) The appointment, promotion, transfer, demotion and suspension.

(7) Cooperation with the Department of Public Instruction, the State Board of Education, the Board of Higher Education, and the colleges and universities of the State in developing pre-service and in-service training programs.

(7A) The separation of employees.

(8) The evaluation of employee performance, the granting of salary increments, and a program of meritorious service awards.

(9) The investigation of complaints and the hearing of appeals of applicants, employees, and former employees and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, and reinstatement in all cases as the Commission shall find justified.

"Reinstatement" as used in this subdivision refers to the reemployment of a former State employee who separated from service in good standing.

(10) Such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and reasonable system of personnel administration.

(11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.

(12) The appointment of hearing officers to hear appeals at various locations around the State as provided for in Article 3 of Chapter 150A, and the relationship of the record made by such hearing officers to proceedings by the Commission.

(13) The employment of independent attorneys to represent the Department when some conflict would result from using Department of Justice attorneys.

Such policies and rules shall not limit the power of any elected or appointed department head, in his discretion and upon his determination that it is in the best interest of the Department, to transfer, demote, or separate a State employee who has not been continuously employed by the State of North Carolina for the immediate five preceding years. (1965, c. 640, s. 2; 1975, c. 667, ss. 6, 7; 1977, c. 288, s. 1; c. 866, ss. 1, 17, 20.)

Editor's Note. — The 1975 amendment, effective Feb. 1, 1976, substituted "Commission" for "Board" in the introductory language, rewrote subdivision (9), and added subdivisions (11) through (13).

A literal compliance with the direction of the 1975 act would require the substitution of "Commission" for "Board" in subdivision (7) of this section.

The first 1977 amendment, effective July 1, 1977, deleted, at the end of subdivision (8), "which may include cash awards to be paid from savings resulting from the adoption of the employee suggestions, but in no case shall the cash award exceed ten percent (10%) of the savings resulting during the first year following adoption, or a maximum of one thousand dollars ($1,000)."

The second 1977 amendment, effective July 1, 1977, in the first paragraph, substituted "demotion and suspension" for "demotion, suspension, and separation of employees" at the end of subdivision (6), added subdivision (7A), added the second sentence of subdivision (9), inserted "or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level" in subdivision (11) and substituted attorneys' fees and witnesses' fees" for "attorney fees and witness fees" in subdivision (11). The amendment also added the second paragraph.

Frustration of Purpose and Public Policy. — The purpose of this Chapter and thus public policy would be frustrated by enforcement of contracts made in violation of the valid rules established pursuant to subdivision (3). Bean v. Taylor, 408 F. Supp. 614 (M.D.N.C.), aff'd, 534 F. 2d 328 (4th Cir. 1976).

If the State Personnel Commission or its officers had the power to enter into an enforceable contract with one not qualified under the rules contemplated by this section, this Chapter would be meaningless. Bean v. Taylor, 408 F. Supp. 614 (M.D.N.C.), aff'd, 534 F. 2d 328 (4th Cir. 1976).

Applied in Grissom v. North Carolina Dep't of Revenue, 28 N.C. App. 277, 220 S.E.2d 872 (1976).

Quoted in Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 126-5. Employees subject to Chapter; exemptions. — (a) The provisions of this Chapter shall apply to all State employees not herein exempt, and to employees of local social services departments, public health departments, mental health clinics, and local civil defense agencies which receive federal grant-in-aid funds; and the provisions of this Chapter may apply to such other county employees as the several boards of county commissioners may from time to time determine.

(b) The provisions of the Chapter shall not apply to public school superintendents, principals, teachers, other public school employees, and employees of the offices of the Governor and the Lieutenant Governor.

(c) Except as to Articles 6 and 7, the provisions of the Chapter shall not apply to instructional and research staff, physicians and dentists of the University of North Carolina; employees whose salaries are fixed under the authority vested in the Board of Governors of the University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14; community colleges' employees whose salaries are fixed in accordance with the provisions of G.S. 115A-5 and 115A-14; members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis; officials or employees whose salaries are fixed by the Governor or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State or the Advisory Budget Commission or the General Assembly; employees of the General Assembly and its agencies and temporary employees of activities ancillary to the General Assembly; employees of the Judicial Department; blind or visually handicapped employees of the Department of Human Resources, Division of Services for the Blind, Business Enterprise Section, vending stand employees; constitutional officers of the State.

(d) Except as to the policies, rules and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) An employee of the State of North Carolina who has not been continuously employed by the State of North Carolina for the immediate five preceding years.

(2) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the administrative head to act for and perform all of the duties of such administrative head during his absence or incapacity.

(3) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(4) Other deputies, administrative assistants, division or agency heads or other employees, by whatever title, that serve in policy-making positions and any confidential secretary or confidential assistant to any such deputy, administrative assistant, division or agency head or employee, such positions to be designated by the Governor or by each elected department head in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate by May 1 of the year in which the oath of office is administered to each Governor. In the event of a vacancy in the office of Governor or in a department headed by a member of the Council of State, the person who succeeds to or is appointed or elected to fill such unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after the oath of office is administered to such person.

(5) Any employee holding a position which is created or transferred to a different department, or in which a reorganization of a department has occurred, after May 1 of the year in which the oath of office is administered to the Governor, and which is designated as a policy-making position by the Governor or by each elected department head; such designation to be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after

such position is created, transferred, or in which reorganization has occurred.

(6) Subsequent to the designation of a policy-making position as exempt as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor or by an elected department head in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(e) If an employee with five or more continuous years of service to the State in a subject position either transfers, on or after January 8, 1977, to a position designated as exempt or who occupied a position that prior to January 8, 1977, was subject to the State Personnel Act and that position is declared exempt on or after January 8, 1977, upon leaving such designated position, for reasons other than just cause, such employee shall have priority to any position that becomes available for which the employee is qualified. No employee shall be placed in an exempt position without prior written notification that such position is so designated.

(f) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the question shall be investigated by the State Personnel Office and decided by the State Personnel Commission, and any appeal shall be to the Governor whose decision shall be final. Provided, however, if the Governor does not act on such appeal within 60 days then the decision of the State Personnel Commission shall be final.

(g) For the purposes of this section, a policy-making position is one in which the job duties include a significant input into and control over the final determination of a settled course of action affecting the level or nature of services of a defined governmental program. A position empowered with the authority to impose the final decision as to a settled course of action to be followed by an entire department, agency, or division is considered a policy-making position. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982; 1971, c. 1025, s. 2; 1973, c. 476, s. 143; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5.)

Editor's Note. —

The 1975 amendment, effective Feb. 1, 1976, rewrote subsection (b) and added subsections (c) through (e).

The 1977 amendment, effective July 1, 1977, rewrote the provisions of this section following subsection (a).

Session Laws 1977, c. 866, s. 19, provides: "Notwithstanding any other provision of the act, the power granted to the Governor and elected department heads to designate policy-making positions by G.S. 126-5 and, as the same is amended by Section 2 of this act, may be exercised anytime within 120 days of the effective date of this act as to positions created or transferred or in which there was a significant change in duties between January 8, 1977, and the effective date of this act."

The provisions of subsection (b) control over the provisions of § 143B-9. See opinion of Attorney General to Mr. G. C. Davis, Jr., Director, Position Analysis Division, Office of State Personnel, 46 N.C.A.G. 148 (1976).

Cited in Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 126-6. Policies continued; powers, etc., transferred.

Editor's Note. — Because this section relates to past events, no change has been made in it pursuant to Session Laws 1975, c. 667, s. 2, which changes the title of the State Personnel Board to State Personnel Commission.

§ 126-6.1. Vocational teachers in schools operated by Department of Human Resources. — Applicants who are otherwise qualified for employment as a vocational teacher in any school for juveniles operated by the State Department of Human Resources shall not be required, as a condition of employment, to have completed any postsecondary school courses. (1975, c. 860.)

ARTICLE 2.

Salaries and Leave of State Employees.

§ 126-7. Automatic and merit salary increases for State employees. — It shall be considered a part of the personnel policy of this State that salary increases as provided in the compensation plan shall be granted in accordance with a standard of efficiency as established by the State Personnel Commission. Each employee whose performance merits his retention in service shall be granted a salary increase in an amount corresponding to the increments between steps of the applicable salary range at least once each year until he reaches the third step of the salary range established for the class to which his position is assigned. Prior to July 1 of each biennium, each agency, board, commission, department, or institution of State government subject to the provisions of this Article shall file with the State Personnel Director a written description of the plan or method it is currently following in awarding or allocating efficiency or merit salary increments. At the same time, each such agency, board, commission, department, or institution shall cause a copy thereof to be distributed to each employee. The State Personnel Director, with the approval of the State Personnel Commission, shall modify, alter or disapprove any such plan submitted to him which he deems not to be in accordance with the provisions of this Article. Within the limit of available funds, each employee meeting higher standards may be granted increases up to but not exceeding the maximum of the salary range established for the class to which his position is assigned. If, in addition to the salary ranges, the State Personnel Commission shall establish uniform provisions for a system of payments over and above the standard salary ranges on the basis of longevity in service, that plan of payments shall not be considered in applying this policy governing annual salary increments. The head of each department, bureau, agency, or commission, when making his budget request for the ensuing biennium, shall anticipate the funds which will be required during the biennium for the purpose of paying salary increments and shall include those amounts in his budget request. In no case shall the amount estimated for annual increments above the third step of the range exceed two thirds of the sum which would be required to grant increments to all the personnel of the agency then receiving or who will receive a salary equal to or above the third step of the salary range. With the approval of the State Personnel Commission, State departments, bureaus, agencies, or commissions with 25 or less employees subject to the provisions of this Chapter may exceed the two-thirds restrictions herein provided. (1965, c. 640, s. 2; 1975, c. 667, s. 2; 1977, c. 802, s. 40.5; c. 866, s. 6.)

Editor's Note. — The 1975 amendment, effective Feb. 1, 1976, substituted "Commission" for "Board" throughout the section.

The first 1977 amendment, effective July 1, 1977, substituted "third step" for "intermediate salary step nearest to, but not exceeding the middle" in the second sentence and for "step nearest but not exceeding the middle" near the beginning of the ninth sentence and substituted "third" for "intermediate" near the end of the ninth sentence.

The second 1977 amendment, effective July 1, 1977, incorporated the changes made by the first 1977 amendment and, in addition, substituted "July 1 of each biennium" for "July 1, 1965" in the third sentence, substituted "to him" for "to it" in the fifth sentence, substituted "the basis of

longevity in service" for "a basis combining longevity in service and merit in the performance of duties" in the seventh sentence, inserted "annual" near the beginning of the ninth sentence, and deleted "during the first year of the biennium" preceding "a salary equal to" in the ninth sentence.

§ 126-8. Minimum leave granted State employees. — The amount of vacation leave granted to each full-time State employee subject to the provisions of this Chapter shall be determined in accordance with a graduated scale established by the State Personnel Commission which shall allow the equivalent rate of not less than two weeks' vacation per calendar year, prorated monthly, cumulative to at least 30 days. Sick leave allowed as needed to such State employees shall be at a rate not less than 10 days for each calendar year, cumulative from year to year. Notwithstanding any other provisions of this section, no full-time State employee subject to the provisions of Chapter 126, as the same appears in the Cumulative Supplement to Volume 3B of the General Statutes, on May 23, 1973, shall be allowed less than the equivalent of three weeks' vacation per calendar year, cumulative to at least 30 days. (1965, c. 640, s. 2; 1973, c. 697, ss. 1, 2; 1975, c. 667, s. 2.)

Editor's Note. —
The 1975 amendment, effective Feb. 1, 1976, substituted "Commission" for "Board" near the middle of the first sentence.

ARTICLE 3.

Local Discretion as to Local Government Employees.

§ 126-9. County or municipal employees may be made subject to rules adopted by local governing body. — (a) When a board of county commissioners adopts rules and regulations governing annual leave, sick leave, hours of work, holidays, and the administration of the pay plan for county employees generally and the county rules and regulations are filed with the State Personnel Director, the county rules will supersede the rules adopted by the State Personnel Commission as to the county employees otherwise subject to the provisions of this Chapter.

(b) No county employees otherwise subject to the provisions of this Chapter may be paid a salary less than the minimum nor more than the maximum of the applicable salary range adopted in accordance with this Chapter without approval of the State Personnel Commission. Provided, however, that subject to the approval of the State Personnel Commission, a board of county commissioners may adjust the salary ranges applicable to employees who are otherwise subject to the provisions of this Chapter, in order to cause the level of pay to conform to local financial ability and fiscal policy. The State Personnel Commission shall adopt policies and regulations to ensure that significant relationships within the schedule of salary ranges are maintained.

(1975, c. 667, s. 2.)

Editor's Note. — The 1975 amendment, effective Feb. 1, 1976, substituted "Commission" for "Board" throughout subsections (a) and (b).

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

§ 126-10. Personnel services to local governmental units. — The State Personnel Commission may make the services and facilities of the Office of State Personnel available upon request to the political subdivisions of the State. The State Personnel Commission may establish reasonable charges for the service and facilities so provided, and all funds so derived shall be deposited in the State treasury to the credit of the general fund. (1965, c. 640, s. 2; 1975, c. 667, ss. 2, 12.)

Editor's Note. — The 1975 amendment, effective Feb. 1, 1976, substituted "Commission" for "Board" throughout the section and substituted "Office of State Personnel" for "State Personnel Department."

§ 126-11. Local personnel system may be established. — The board of county commissioners of any county which shall establish and maintain a personnel system for all employees of the county subject to its jurisdiction, which system is found from time to time by the State Personnel Commission to be substantially equivalent to the system established under Article 1 of this Chapter for employees of local welfare departments, public health departments, and mental health clinics, may include employees of these local agencies within the terms of such system. Employees covered by that system shall be exempt from the provisions of Article 1 of this Chapter. (1965, c. 640, s. 2; 1975, c. 667, s. 2.)

Editor's Note. — The 1975 amendment, effective Feb. 1, 1976, substituted "Commission" for "Board" near the middle of the first sentence.

ARTICLE 6.

Equal Employment Opportunity Assisting in Obtaining State Employment.

§ 126-16. Equal employment opportunity by State departments and agencies and local political subdivisions. — All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment, without regard to race, religion, color, creed, national origin, sex, age, or physical disability to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. This section with respect to equal opportunity as to age shall apply only to those persons above the age of 40 years and under the age of 65 years. (1971, c. 823; 1975, c. 158; 1977, c. 866, s. 7.)

Editor's Note. — The 1975 amendment substituted "sex or age" for "or sex" in the first sentence and added the second sentence.

The 1977 amendment, effective July 1, 1977, in the first sentence, substituted "age, or physical disability" for "or age" and added the language beginning "except where specific age, sex or physical requirements" to the end.

§ 126-17. Retaliation by State departments and agencies and local political subdivisions. — No State department, agency, or local political subdivision of North Carolina shall retaliate against an employee for protesting alleged violations of G.S. 126-16. (1977, c. 866, s. 8.)

Editor's Note. — Session Laws 1977, c. 866, s. 21, makes this section effective July 1, 1977.

§ 126-18. Compensation for assisting person in obtaining State employment barred; exception. — It shall be unlawful for any person, firm or corporation to collect, accept or receive any compensation, consideration or thing of value for obtaining on behalf of any other person, or aiding or assisting any other person in obtaining employment with the State of North Carolina; provided, however, any person, firm, or corporation that is duly licensed and supervised by the North Carolina Department of Labor as a private employment service acting in the normal course of business, may collect such regular and customary fees for services rendered pursuant to a written contract when such fees are paid by someone other than the State of North Carolina; however, any person, firm, or corporation collecting fees for this service must have been licensed by the North Carolina Department of Labor for a period of not less than one year.

Any person, firm or corporation collecting fees for this service must make a monthly report to the Department of Labor listing the name of the person, firm or corporation collecting fees and the person for whom a job was found, the nature and purpose of the job obtained, and the fee collected by the person, firm or corporation collecting the fee. Violation of this section shall constitute a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1977, c. 397, s. 1.)

Editor's Note. — Session Laws 1977, c. 397, s. 2, provides that the act shall not affect existing contracts.

§§ 126-19 to 126-21: Reserved for future codification purposes.

ARTICLE 7.

The Privacy of State Employee Personnel Records.

§ 126-22. Personnel files not subject to inspection under § 132-6. — Personnel files of State employees, former State employees, or applicants for State employment shall not be subject to inspection and examination as authorized by G.S. 132-6. For purposes of this Article, a personnel file consists of any information gathered by the department, division, bureau, commission, council, or other agency subject to Article 7 of this Chapter which employs an individual, previously employed an individual, or considered an individual's application for employment, or by the office of State Personnel, and which information relates to the individual's application, selection or nonselection, promotions, demotions, transfers, leave, salary, suspension, performance evaluation forms, disciplinary actions, and termination of employment wherever located and in whatever form. Personnel files of former State employees who have been separated from State employment for 10 or more years may be open to inspection and examination except for papers and documents relating to demotions and to disciplinary actions resulting in the dismissal of the employee. (1975, c. 257, s. 1; 1977, c. 866, s. 9.)

Editor's Note. — Session Laws 1975, c. 257, s. 2, makes the act effective Jan. 1, 1976.

The 1977 amendment, effective July 1, 1977, rewrote this section.

§ 126-23. Certain records to be kept by State agencies open to inspection. — Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee: name, age, date of original employment or appointment to the State service, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief. (1975, c. 257, s. 1; c. 667, s. 2.)

Editor's Note. — The 1975 amendment, effective Feb. 1, 1976, substituted "Commission" for "Board" in the second sentence.

§ 126-24. Confidential information in personnel files; access to such information. — All other information contained in a personnel file is confidential and shall not be open for inspection and examination except to the following persons.

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file in its entirety except for (i) letters of reference solicited prior to employment, or (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. An employee's medical record may be disclosed to a licensed physician designated in writing by the employee;

(2) The supervisor of the employee;

(3) Members of the General Assembly who may inspect and examine personnel records under the authority of G.S. 120-19;

(4) A party by authority of a proper court order may inspect and examine a particular confidential portion of a State employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the department head of the employee whose record is to be inspected or, in the case of an applicant for employment or a former employee, by the department head of the agency in which the record is maintained as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation. (1975, c. 257, s. 1; 1977, c. 866, s. 10.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, deleted "State employee's" preceding "personnel file" in the introductory language, inserted "applicant for employment, former employee" near the beginning of subdivision (1), and inserted "or, in the case of an applicant for employment or a former employee, by the department head of the agency in which the record is maintained" in the second sentence of subdivision (5).

§ 126-25. Remedies of employee objecting to material in file. — An employee, former employee or applicant for employment who objects to material

in his file may place in his file a statement relating to the material he considers to be inaccurate or misleading. An employee, former employee or applicant for employment who objects to material in his file because he considers it inaccurate or misleading may seek the removal of such material from his file in accordance with the grievance procedure of that department, including appeal to the State Personnel Commission. (1975, c. 257, s. 1; c. 667, s. 2; 1977, c. 866, s. 11.)

Editor's Note. — The 1975 amendment, effective Feb. 1, 1976, substituted "Commission" for "Board" in the second sentence.

The 1977 amendment, effective July 1, 1977, inserted "former employee or applicant for employment" in the first and second sentences.

§ 126-26. Rules and regulations. — The State Personnel Commission shall prescribe such rules and regulations as it deems necessary to implement the provisions of this Article. (1975, c. 257, s. 1; c. 667, s. 2.)

Editor's Note. — The 1975 amendment, effective Feb. 1, 1976, substituted "Commission" for "Board."

§ 126-27. Penalty for permitting access to confidential file by unauthorized person. — Any public official or employee who shall knowingly and willfully permit any person to have access to or custody or possession of any portion of a personnel file designated as confidential by this Article, unless such person is one specifically authorized by G.S. 126-24 to have access thereto for inspection and examination, shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 257, s. 1.)

§ 126-28. Penalty for examining, copying, etc., confidential file without authority. — Any person, not specifically authorized by G.S. 126-24 to have access to a personnel file designated as confidential by this Article, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 257, s. 1.)

§ 126-29. Access to material in file for agency hearing. — A party to a quasi-judicial hearing of a State agency subject to Article 7 of this Chapter, or a State agency subject to Article 7 of this Chapter which is conducting a quasi-judicial hearing, may have access to relevant material in personnel files and may introduce copies of such material or information based on such material as evidence in the hearing either upon consent of the employee, former employee, or applicant for employment or upon subpoena properly issued by the agency either upon request of a party or on its own motion. (1977, c. 866, s. 12.)

Editor's Note. — Session Laws 1977, c. 866, s. 21, makes this section effective July 1, 1977.

§§ 126-30 to 126-33: Reserved for future codification purposes.

ARTICLE 8.

Employee Appeals of Grievances and Disciplinary Action.

§ 126-34. Grievance appeal for State employees. — Any permanent State employee having a grievance arising out of or due to his employment and who does not allege discrimination because of his age, sex, race, color, national origin, religion, creed, physical disability, or political affiliation shall first discuss his problem or grievance with his supervisor and follow the grievance procedure established by his department or agency. (1975, c. 667, s. 10.)

Editor's Note. — Session Laws 1975, c. 667, s. 13, makes the act effective Feb. 1, 1976.

Cited in Nantz v. Employment Security Comm'n, 290 N.C. 473, 226 S.E.2d 340 (1976).

§ 126-35. Written statement of reason for disciplinary action. — No permanent employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. A copy of the written statement given the employee and the employee's appeal shall be filed by the department with the State Personnel Director within five days of their delivery. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision. (1975, c. 667, s. 10.)

This section creates a reasonable expectation of continued employment and a property interest within the meaning of the due process clause of the United States Constitution. Faulkner v. North Carolina Dep't of Corrections, 428 F. Supp. 100 (W.D.N.C. 1977).

Quoted in Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 126-36. Appeal of unlawful State employment practice. — Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied him or that demotion, layoff or termination of employment was forced upon him in retaliation for opposition to alleged discrimination or because of his age, sex, race, color, national origin, religion, creed, political affiliation, or physical disability except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the State Personnel Commission. (1975, c. 667, s. 10; 1977, c. 866, ss. 13, 16.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, deleted "applicant for State employment or" preceding "State employee" near the beginning of the section and inserted "in retaliation for opposition to alleged discrimination or" near the middle of the section.

Quoted in Faulkner v. North Carolina Dep't of Corrections, 428 F. Supp. 100 (W.D.N.C. 1977).

§ 126-36.1. Appeal to Personnel Commission by applicant for employment. — Any applicant for State employment who has reason to believe that employment was denied in violation of G.S. 126-16 shall have the right to appeal directly to the State Personnel Commission. (1977, c. 866, s. 16.)

Editor's Note. — Session Laws 1977, c. 866, s. 21, makes this section effective July 1, 1977.

§ 126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision. — The State Personnel Director or any other person or persons designated by the Commission shall investigate the disciplinary action or alleged discrimination which is appealed to the Commission. The State Personnel Commission may hear the case or direct the State Personnel Director or other person or persons designated by the Commission to conduct a hearing of the facts and issues. If, following the investigation and hearing, a settlement is agreed to by both parties, the State Personnel Director or the designated agent shall certify the settlement to the Commission. If, following the investigation and hearing, there are issues and facts on which agreement cannot be reached, the Personnel Director or the designated agent shall report his findings to the Commission with his recommendations. The Commission at its next meeting, or as soon as possible thereafter, shall consider the report and modify, alter, set aside or affirm said report and certify its findings to the appointing authority which shall be binding. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority. (1975, c. 667, s. 10.)

Quoted in Faulkner v. North Carolina Dep't of Corrections, 428 F. Supp. 100 (W.D.N.C. 1977).

§ 126-38. Time limit for appeals. — Any employee appealing any decision or action to the Commission shall file a written statement of appeal with the Commission or its designate no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal. (1977, c. 866, s. 14.)

Editor's Note. — Session Laws 1977, c. 866, s. 21, makes this section effective July 1, 1977.

§ 126-39. State employee defined. — For the purposes of this Article, except for positions subject to competitive service and except for appeals brought under G.S. 126-16 and 126-25, the terms "permanent State employee," "permanent employee," "State employee" or "former State employee" as used in this Article

shall mean a person who has been continuously employed by the State of North Carolina for five years at the time of the act, grievance, or employment practice complained of. (1977, c. 866, s. 15.)

Editor's Note. — Session Laws 1977, c. 866, s. 21, makes this section effective July 1, 1977.

§§ 126-40 to 126-42: Reserved for future codification purposes.

ARTICLE 9.

The Administrative Procedure Act and Modifications.

§ 126-43. The Administrative Procedure Act. — The provisions of the Administrative Procedure Act, Chapter 150A, shall apply to the State Personnel System and hearing and appeal matters before the Commission, except where there are specific statutory provisions to the contrary, including the following:

(1) Section 150A-29, concerning the rules of evidence, shall not apply, except on specific written request to the Commission by an aggrieved party appearing before the Commission.

(2) The last sentence of G.S. 150A-27, concerning fees for subpoenaed witnesses, shall not apply. (1975, c. 667, s. 11.)

Editor's Note. — Session Laws 1975, c. 667, s. 13, makes the act effective Feb. 1, 1976.

Judicial Review Available. — Under this section the provisions of the Administrative Procedure Act, Chapter 150A, apply to the State Personnel System and hearing and appeal matters before the State Personnel Commission. Therefore, final agency decisions of the Commission are subject to judicial review under Chapter 150A, Article 4, of the Administrative Procedure Act once the aggrieved person has exhausted all available administrative remedies made available to him by statute or agency rule. Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 126-44. Witness fees. — The party requesting the subpoena to subpoenaed witnesses who are not State officials or employees shall pay witness fees in accordance with G.S. 7A-314. State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6. (1975, c. 667, s. 11.)

§ 126-45: Repealed by Session Laws 1977, c. 866, s. 18, effective July 1, 1977.

§§ 126-46 to 126-50: Reserved for future codification purposes.

ARTICLE 10.

Interchange of Governmental Employees.

§ 126-51. Short title. — This Article shall be known and may be cited as the "North Carolina Interchange of Governmental Employees Act of 1977." (1977, c. 783, s. 1.)

Editor's Note. — Session Laws 1977, c. 783, s. 5, contains a severability clause.

§ 126-52. Definitions. — For purposes of this Article:

(1) "Assigned employee" means an employee of a sending agency who is assigned or detailed to a receiving agency as part of the employee's regular duties with the sending agency.

(2) "Employee on leave" means an employee on leave of absence without pay from a sending agency who becomes an employee of a receiving agency while on leave from the sending agency.

(3) "Receiving agency" means any division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government which, under this Article, receives an employee of another governmental division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government.

(4) "Sending agency" means any division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government which, under this Article, sends any employee thereof to another governmental division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government. (1977, c. 783, s. 1.)

§ 126-53. Authority to interchange employees. — (a) Any division, department, agency, instrumentality, authority, or political subdivision of the State of North Carolina is authorized to participate in a program of interchange of employees with divisions, departments, agencies, instrumentalities, authorities, or political subdivisions of the federal government, of another state, or of this State, as a sending agency or a receiving agency.

(b) The period of individual assignment, detail, or leave of absence under an interchange program shall not exceed two years.

(c) The temporary assignment of the employee may be terminated by mutual agreement between the sending agency and the receiving agency.

(d) Elected officials may not participate in a program of interchange under this Article. (1977, c. 783, s. 1.)

§ 126-54. Status of employees of sending agency. — (a) Employees of a sending agency participating in an exchange of personnel authorized by G.S. 126-52 may be considered during such participation to be either assigned employees or employees on leave.

(b) Assigned employees shall be entitled to the same salary and employment benefits to which they would be entitled as employees of the sending agency and shall remain employees of the sending agency for all purposes unless otherwise provided in this Article or in a written agreement between the sending agency and the receiving agency.

(c) Employees on leave shall have the same rights, benefits and obligations as other State or local employees subject to this Chapter who are granted leaves of absences, unless otherwise provided in this Article, or in a written agreement between the sending agency and the receiving agency.

(d) When a division, department, agency, instrumentality, authority or political subdivision of the State of North Carolina acts as a sending agency, employees participating in an exchange of personnel authorized by G.S. 126-52, whether considered assigned employees or employees on leave, shall have the same rights, benefits and obligations to participate in and receive benefits, including death benefits, from any retirement system of which they are

members as employees of the sending agency, whether they are members of the Teachers' and State Employees' Retirement System, the North Carolina Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Retirement Fund, or other Retirement System which has been or may be established by the State for public employees; provided, however, that the receiving agency agrees to and makes the employer contributions and deducts from the salary of the employee the employee contributions for continued membership in such Retirement System. Provided, further, that if no contributions are paid into the appropriate Retirement System during the period that the employee participates in the exchange of personnel authorized by this Article, such employee shall remain entitled to death benefits resulting from his death during the period of the exchange. Provided, that where duplicate benefits would otherwise be payable on account of disability or death, the employee or his estate shall elect, within one year of the date of disability or death, which benefits to receive. (1977, c. 783, s. 1.)

§ 126-55. Travel expenses of employees from this State. — A sending agency in this State shall not pay the travel expenses of its assigned or on leave employees and shall not pay the travel expenses of such employees incurred in the course of performing work for the receiving agency. Such expenses shall be borne by the receiving agency. (1977, c. 783, s. 1.)

§ 126-56. Status of employees of other governments. — (a) When a division, department, agency, instrumentality, authority or political subdivision of the State of North Carolina acts as a receiving agency, assigned employees of the sending agency remain the employees of the sending agency and continue to receive the employment benefits of the sending agency unless otherwise specified in a written agreement between the sending agency and the receiving agency.

(b) When a division, department, agency, instrumentality, authority or political subdivision of this State acts as a receiving agency, employees on leave from the sending agency will receive appointments as employees with the receiving agency and will be entitled to the same employment benefits as other employees of the receiving agency unless otherwise specified in a written agreement between the sending agency and the receiving agency. Such appointments may be made without regard to any rules or regulations of the receiving agency regarding the selection of employees; but all rules of the State Personnel Act shall apply to State employees. (1977, c. 783, s. 1.)

§ 126-57. Travel expenses of employees of other governments. — A receiving agency in the State of North Carolina may, in accordance with its travel regulations and travel regulations by law, pay the travel expenses incurred in the course of an assigned employee's duties or incurred in the course of the duties of an employee on leave with the receiving agency on the same basis as the travel expenses of regular employees are paid. (1977, c. 783, s. 1.)

§ 126-58. Administration. — The State Personnel Commission and any State division, department, agency, instrumentality, authority or political subdivision participating in an interchange of employees program may promulgate rules or regulations necessary for the administration of such program, so long as such rules or regulations do not conflict with the provisions of this Article or any other provision of law. (1977, c. 783, s. 1.)

Chapter 127.

Militia.

§§ 127-1 to 127-127: Repealed by Session Laws 1975, c. 604, s. 1.

Cross Reference. — As to present provisions relating to the militia, see § 127A-1 et seq.

Chapter 127A.

Militia.

Article 1.

Classification of Militia.

Article 2.

General Administrative Officers.

Article 3.

National Guard.

Cross Reference. — As to transfer to the North Carolina National Guard to the Department of Crime Control and Public Safety, see § 143A-289.

Editor's Note. — Session Laws 1975, c. 604, repealed Chapter 127 and Article 23 of Chapter 143 and enacted this Chapter in lieu thereof. No attempt has been made to point out the changes made, but, where appropriate, the historical citations to the sections of the repealed Chapter and Article have been added to the corresponding sections of the new Chapter.

Session Laws 1977, c. 70, s. 2, provides: "Whenever the words 'Department of Military and Veterans Affairs' are used in G.S. 127A-1 through G.S. 127A-195, ... the same shall be deleted and the words 'Department of Crime Control and Public Safety' shall be inserted in lieu thereof. The act makes no mention of the Secretary of Military and Veterans Affairs; however, in order to give effect to its obvious intent, the editors have substituted "Secretary of Crime Control and Public Safety" for "Secretary of Military and Veterans Affairs" throughout this Chapter.

ARTICLE 1.

Classification of Militia.

§ 127A-1. Composition of militia. — The militia of the State shall consist of all able-bodied citizens of the State and of the United States and such other able-bodied persons who have or shall declare their intention to become citizens of the United States, subject to such qualifications as may be hereinafter prescribed, who shall be drafted into said militia or shall voluntarily accept commission, appointment, or assignment to duty therein. (1917, c. 200, s. 1; C. S., s. 6791; 1949, c. 1130, s. 1; 1957, c. 1043, s. 1; 1963, c. 1016, s. 2; 1967, c. 563, s. 1; 1975, c. 604, s. 2.)

§ 127A-2. Classification of militia. — The militia shall be divided into the organized and unorganized militia. The organized militia shall consist of four classes: the North Carolina national guard, the naval militia, the State defense militia and historic military commands. (1975, c. 604, s. 2.)

§ 127A-3. Organized militia; national guard. — The North Carolina national guard, both army and air, shall consist of regularly commissioned, warrant and enlisted personnel between such ages as may be established by regulations promulgated by the secretary of the appropriate service and shall be organized, governed, armed, equipped and have such duties and responsibilities as hereinafter provided. (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; 1975, c. 604, s. 2.)

§ 127A-4. Organized militia; naval militia. — The naval militia shall consist of regularly commissioned, warrant and enlisted personnel between such ages as may be established by regulations promulgated by the secretary of the appropriate service and shall be organized, governed, armed, equipped and have such duties and responsibilities as hereinafter provided. (1917, c. 200, s. 3; C. S., s. 6793; 1949, c. 1130, s. 1; 1975, c. 604, s. 2.)

§ 127A-5. Organized militia; 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 5 of this Chapter and shall be organized, governed, armed, equipped and have such duties and responsibilities as hereinafter provided. (1963, c. 1016, s. 2; 1975, c. 604, s. 2.)

§ 127A-6. Organized militia; historic military commands. — Historic military commands are those historic groups which remain active by meeting at least once a month and which follow military procedures. Only such groups as may be designated by the Governor shall fall within this branch of the militia. Any maximum age limits prescribed by this Chapter shall not be applicable to members of historic military commands. (1957, c. 1043, s. 2; 1967, c. 563, s. 2; 1975, c. 604, s. 2.)

§ 127A-7. Composition of unorganized militia. — The unorganized militia shall consist of all other able-bodied citizens of the State and of the United States and such other able-bodied persons who have or shall declare their intention to become citizens of the United States, who shall be at least 17 years of age, and, except as otherwise provided by law, under 64 years of age. (1917, c. 200, s. 4; C. S., s. 6794; 1949, c. 1130, s. 1; 1963, c. 1016, s. 2; 1975, c. 604, s. 2.)

§ 127A-8. Exemptions from duty with the militia. — The officers, judicial and executive, of the government of the United States and the State of North Carolina, persons in the military or naval service of the United States, customhouse clerks, persons employed by the United States in the transmission of mail, artificers and personnel employed in the armories, arsenals and navy yards of the United States, pilots, mariners actually employed in the sea service of any citizen or merchant within the United States shall be exempt from duty with the militia without regard to age, and all persons who, because of religious beliefs, shall claim exemption from duty with the militia, if the conscientious holding of such belief by such person shall be established under such regulations as are or may be prescribed for exemption from service with the armed forces of the United States, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any

capacity that shall be declared noncombatant for the armed forces of the United States. (1917, c. 200, s. 5; C. S., s. 6795; 1975, c. 604, s. 2.)

§ 127A-9. Number of troops authorized. — 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; 1975, c. 604, s. 2.)

§ 127A-10. Corps entitled to retain privileges. — Any corps of artillery, cavalry, or infantry existing in the State on the passage of the act of Congress of May 8, 1792, which by the laws, customs, or usages of the State has been in continuous existence since the passage of such act, under its provisions and under the provisions of section 232 and sections 1625 to 1660, both inclusive, of Title 16 of the revised statutes of 1873 and the act of Congress of January 21, 1903, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of the militia; but such organizations may be a part of the national guard, and entitled to all the privileges of this Chapter, and shall conform in all respects to the organization, discipline, and training of the national guard in time of war. For purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving. (1917, c. 200, s. 87; C. S., s. 6798; 1975, c. 604, s. 2.)

§§ 127A-11 to 127A-15: Reserved for future codification purposes.

ARTICLE 2.

General Administrative Officers.

§ 127A-16. Governor as commander in chief. — The Governor shall be commander in chief of the militia and shall have power to call out the militia to execute the laws, secure the safety of persons and property, suppress riots or insurrections, repel invasions and provide disaster relief. (1917, c. 200, s. 11; C. S., s. 6799; 1975, c. 604, s. 2.)

§ 127A-17. 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 organized and unorganized 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; 1975, c. 604, s. 2.)

§ 127A-17.1. Confidentiality of national guard records. — Notwithstanding any provision of Chapter 143B, no records of the national guard in the Department of Crime Control and Public Safety shall be disclosed or used for any purpose except for official purposes, and no records shall be disclosed, destroyed or used in any manner which is in violation of any existing federal law or regulation. Nothing in this Chapter shall convert records which are the property of the federal government into State property. (1977, c. 70, s. 3.)

Editor's Note. — Session Laws 1977, c. 70, s. 37, makes the act effective April 1, 1977.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-18. Personal staff of Governor. — The Governor may detail not more than 10 active national guard members and two active naval militia members who shall in addition to their regular duties, perform the duties of aides-de-camp on the personal staff of the Governor. (1917, c. 200, s. 12; C. S., s. 6801; 1959, c. 218, s. 1; 1975, c. 604, s. 2.)

§ 127A-19. Adjutant General. — The military head of the militia shall be the Adjutant General who shall hold the rank of major general. The Adjutant General shall be appointed by the Governor in his capacity as commander in chief of the militia, in consultation with the Secretary of Crime Control and Public Safety, and shall serve at the pleasure of the Governor. No person shall be appointed as Adjutant General who has 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.

Subject to approval of the Governor and in consultation with the Secretary of Crime Control and Public Safety, the Adjutant General may appoint a deputy adjutant general and an assistant adjutant general for air national guard, both of whom may hold the rank of brigadier general and who shall serve at the pleasure of the Governor. The Adjutant General may also employ such staff members and other personnel as may be authorized by the Secretary and funded. (1917, c. 200, s. 14; C. S., s. 6802; 1925, c. 54; 1939, c. 14; 1949, c. 1225; 1959, c. 218, s. 2; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Secretary of Military and Veterans Affairs" in the second sentence of the first paragraph and in the first sentence of the second paragraph.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-20. Administrative and operational relationships of the Adjutant General. — In all administrative and operational matters affecting the militia while under State control, the Adjutant General shall be responsible to and subject to the direction and supervision of the Secretary of Crime Control and Public Safety. (1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Secretary of Military and Veterans Affairs."

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-21. United States property and fiscal officer. — (a) The Governor of the State, in consultation with the Secretary of Crime Control and Public Safety, shall appoint, designate, or detail, subject to the approval of the Secretary of the Army and the Secretary of the Air Force, a qualified commissioned officer of the North Carolina national guard who is also a commissioned officer of the army national guard of the United States or the air national guard of the United States, as the case may be, to be the United States property and fiscal officer for North Carolina. If the officer is not on active duty, the President may order him to active duty, with his consent, to serve as a property and fiscal officer.

(b) The status of the United States property and fiscal officer is that of a reserve commissioned officer of the army or air force, as appropriate, on extended active duty and detailed for duty with the National Guard Bureau for

administrative purposes. In his capacity as United States property and fiscal officer, he will function under the direction of and cooperate fully with the State Adjutant General.

(c) The assumption and performance of duties and responsibilities, pay and allowances, and other personnel actions to include retention and retirement of an officer appointed and serving as the United States property and fiscal officer will be governed by regulations promulgated by the National Guard Bureau or pursuant to regulations promulgated by the secretary of the appropriate service. (1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Secretary of Military and Veterans Affairs" near the beginning of subsection (a).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-22. North Carolina property and fiscal officer. — (a) Upon full mobilization of the North Carolina national guard into federal service to the extent that the functions of a United States property and fiscal officer no longer exist or are authorized under federal statutes, the Governor of the State, in consultation with the Secretary of Crime Control and Public Safety, may appoint, designate or detail a qualified individual to serve at the pleasure of the Governor as the North Carolina property and fiscal officer for any composition of a nonfederally recognized State national guard or State defense militia organized under the provisions of G.S. 127A-1 et seq.

(b) In consideration of his services for the responsibility, care, utilization, and issue of State or federal facilities and property, under the jurisdiction of the State of North Carolina, the North Carolina property and fiscal officer shall receive from the State such salary as the Governor may authorize to be just and proper; the salary to constitute a charge upon appropriations made to the Department of Crime Control and Public Safety.

(c) The property and fiscal officer for North Carolina shall be an employee of the Department of Crime Control and Public Safety. He shall be required to give 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 distribution 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 State and federal agencies, and shall make such returns and reports through the Secretary of Crime Control and Public Safety concerning same as may be required by the Governor or State laws. (1917, c. 200, ss. 24, 25; C. S., ss. 6804, 6805; 1929, c. 317, s. 1; 1957, c. 136, s. 3; 1963, c. 1016, s. 2; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Crime Control and Public Safety" for "Military and Veterans Affairs" throughout the section.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-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 unorganized 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 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, sections 3540 and 4651.

Any qualified institution desiring the appointment of officers in the North Carolina unorganized 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 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. (1919, c. 265, ss. 1, 2, 3; C. S., s. 6812; 1929, c. 61, s. 1; 1963, c. 1095; 1973, c. 476, s. 128; 1975, c. 604, s. 2.)

§§ 127A-24 to 127A-28: Reserved for future codification purposes.

Article 3.

National Guard.

§ 127A-29. National guard. — The national guard class of the four classes of the organized militia as established under G.S. 127A-2 is hereby designated the North Carolina national guard. Those elements of the North Carolina national guard which receive federal recognition by the United States government shall hold a dual status both as State troops and as a reserve component of the armed forces of the United States. In its federal status, the North Carolina national guard shall be subject to federal laws and regulations pertaining thereto. The Adjutant General shall insure compliance with such federal laws and regulations and with all State laws and orders of the Governor not inconsistent with those federal laws and regulations. (1975, c. 604, s. 2.)

§ 127A-30. 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 army or air force 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; 1975, c. 604, s. 2.)

§ 127A-31. Location of units. — The Governor shall determine and fix the location of the units and headquarters of the national guard within the State; but no organization of the national guard, members of which shall be entitled to and shall have received compensation under the provisions of the act of Congress

approved June 3, 1916, as amended, shall be disbanded without the consent of the President, nor without such consent shall the commissioned or enlisted strength of any such organization be reduced below the minimum that is now or shall be hereafter prescribed therefor by the President. (1917, c. 200, s. 9; C. S., s. 6809; 1921, c. 120, s. 2; 1975, c. 604, s. 2.)

§ 127A-32. 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, 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 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) 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; 1973, c. 620, s. 9; 1975, c. 604, s. 2.)

§ 127A-33. 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; 1975, c. 604, s. 2.)

§ 127A-34. 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; 1975, c. 604, s. 2.)

§ 127A-35. 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 Secretary of the Department of Crime Control and Public Safety 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 30 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; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" in the last sentence of subsection (a).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-36. Retirement of officers. — Retirement of officers shall be regulated so as to conform to federal laws and regulations of the United States relating to retirement of national guard officers. (1917, c. 200, s. 29; C. S., s. 6819; 1949, c. 1130, s. 2; 1975, c. 604, s. 2.)

§ 127A-37. 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 until they shall have subscribed to the following oath of enlistment:

"I do hereby acknowledge to have voluntarily enlisted this . . . . . day of . . . . . ., 19. . . ., in the (Army) (Air) National Guard of the State of North Carolina and as a Reserve of the (Army) (Air Force) with membership in the (Army National Guard of the United States) (Air National Guard of the United States) for a period of (Years — Months — Days) under the conditions prescribed by law, unless sooner discharged by proper authority.

"I, (First Name — Middle Name — Last Name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; 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, regulations, and the Uniform Code of Military Justice, so help me God." (1917, c. 200, s. 30; C. S., s. 6820; 1921, c. 120, s. 6; 1957, c. 136, s. 6; 1959, c. 218, s. 10; 1975, c. 604, s. 2.)

§ 127A-38. Discharge of enlisted personnel. — (a) Enlisted personnel 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; 1975, c. 604, s. 2.)

§ 127A-39. 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; 1975, c. 604, s. 2.)

§ 127A-40. Pensions for the members of the North Carolina national guard. — (a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of fifty dollars ($50.00) per month for 20 years' creditable military service with an additional five dollars ($5.00) per month for each additional year of such service; provided, however, that the total pension shall not exceed one hundred dollars ($100.00) per month. The requirements for such pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.

(3) Have received an honorable discharge from the North Carolina national guard.

(b) Payment to a retired member of the North Carolina national guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's estate.

(c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of the regular components of the armed forces of the United States will be eligible for benefits under this section.

(d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.

(e) Benefits paid under the provisions of this section shall be exempt from the North Carolina income tax.

(f) The provisions of this section shall be administered by the Secretary of Crime Control and Public Safety.

(g) The provisions of this section shall apply to any member or former member of the North Carolina national guard who is qualified for the above retirements with eligibility of such person commencing at age 60 or July 1, 1974, whichever is the later date. (1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Secretary of Military and Veterans Affairs" in subsection (f).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-41. 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; 1975, c. 604, s. 2.)

§ 127A-42. Distinguished Service Medal by Governor of North Carolina. — 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. Upon the recommendation of the Secretary of Crime Control and Public Safety and a board consisting of the Adjutant General and all other general officers and officers assigned to authorized general-officer-grade vacancies, North Carolina national guard, the Governor is authorized to present such medal to any member or former member of the armed forces discharged under honorable conditions, who has distinguished himself by exceptionally meritorious conduct in the performance of outstanding service to the North Carolina national guard. The Governor, on his own authority, may award such medal to the Secretary of Crime Control and Public Safety, the Adjutant General, or any other active or inactive general officer of the armed forces, who has distinguished himself by especially meritorious conduct in the performance of his duties. (1955, c. 255, s. 2; 1963, c. 1016, s. 2; 1973, c. 1124; 1975, c. 604, s. 2; 1977, c. 230, s. 1.)

Editor's Note. — The 1977 amendment, in the third sentence, added the language beginning "Upon the recommendation" and ending "North Carolina national guard" to the beginning of the sentence, deleted "upon the recommendation of the Adjutant General of North Carolina and a board consisting of all general officers and officers assigned to authorize general-officer-grade vacancies, North Carolina national guard" following "present such medal," and inserted "discharged under honorable conditions." The amendment also added the fourth sentence.

§ 127A-43. North Carolina National Guard Meritorious Service Medal. — There is hereby created the North Carolina National Guard Meritorious Service Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Governor or his designated representative is authorized to award this medal upon the recommendation of the Secretary of Crime Control and Public Safety in consultation with the Adjutant General and a board of officers appointed by the Adjutant General. Any member or former member of the armed forces discharged under honorable conditions, who has distinguished himself by heroism, meritorious achievement, or meritorious service to the North Carolina national guard, is eligible for this award. The Governor, on his own authority, may award such medal to the Secretary of Crime Control and Public Safety, the Adjutant General or any other active or inactive general officer of the armed forces who has distinguished himself by heroism, meritorious achievement, or meritorious service to the North Carolina national guard. The required heroism, achievement, or service, while of a lesser degree than that required for awarding of the North Carolina Distinguished Service Medal, must nevertheless be accomplished with distinction. (1973, c. 966, s. 1; 1975, c. 604, s. 2; 1977, c. 230, s. 2.)

Editor's Note. — The 1977 amendment inserted "Secretary of Crime Control and Public Safety in consultation with" in the third sentence, inserted "of the armed forces" and substituted "who has distinguished" for "of the North Carolina national guard who distinguishes" in the fourth sentence, added the present fifth sentence, and substituted "be" for "have been" in the present sixth sentence.

§ 127A-44. North Carolina National Guard Commendation Medal. — There is hereby created the North Carolina National Guard Commendation Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina or his designated representative, who shall not be below the grade of general officer, is authorized to award this medal. Any member or former member of the armed forces discharged under honorable conditions, who distinguishes himself by his example or the performance of a specific act in behalf of the North Carolina national guard, is eligible for this award. (1975, c. 604, s. 2; 1977, c. 230, s. 3.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 127A-45. North Carolina National Guard State Active Duty Award. — There is hereby created the North Carolina National Guard State Active Duty Award which shall be a ribbon of appropriate design. This ribbon and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina is authorized to award this ribbon to members of the North Carolina national guard who satisfactorily serve a tour of State active duty on or after July 1, 1974, by order of the Governor and said tour of State active duty having been designated by the Adjutant General of North Carolina as worthy of this award. Said tours of State active duty designated for this award are to be of such nature as to be a distinct and notable service to a community or the State. (1973, c. 966, s. 2; 1975, c. 604, s. 2.)

§ 127A-45.1. North Carolina National Guard Governor's Unit Citation. — There is hereby created the North Carolina National Guard Governor's Unit Citation which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or his designated representative. The Governor or his designated representative is authorized to present such unit citation, upon recommendation of the Adjutant General, subject to the approval of the Secretary, to any unit of North Carolina national guard distinguishing itself by extraordinary heroism or meritorious service while in a State active duty status. The unit must display such gallantry, determination, and esprit de corps in accomplishing its mission under conditions which set it apart and above other units. (1977, c. 229, s. 1.)

§ 127A-45.2. North Carolina National Guard Meritorious Unit Citation. — There is hereby created the North Carolina National Guard Meritorious Unit Citation which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or his designated representative. The Adjutant General is authorized to present such citation to any unit of the North Carolina national guard distinguishing itself through heroism or meritorious service to the State of North Carolina. The required heroism or meritorious service, while of a lesser degree than that required for the award of the North Carolina National Guard Governor's Unit Citation, must nevertheless have been accomplished with distinction. (1977, c. 229, s. 2.)

§ 127A-45.3. North Carolina National Guard Distinguished Civilian Service Medal. — There is hereby created the North Carolina National Guard Distinguished Civilian Service Medal which shall be of appropriate design, rosette or other device to be worn in lieu thereof, and citation certificate, of a design approved by the Governor or his designated representative. The Governor or his designated representative is authorized to award this medal upon the recommendation of the Adjutant General of North Carolina and a board of officers and noncommissioned officers appointed by the Adjutant General, to United States citizens and governmental officials at the policy development level who render distinguished service to the North Carolina national guard. (1977, c. 796.)

§ 127A-45.4. North Carolina National Guard Outstanding Civilian Service Medal. — There is hereby created the North Carolina National Guard Outstanding Civilian Service Medal which shall be of appropriate design, rosette or other device to be worn in lieu thereof, and citation certificate, of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina is authorized to award this medal upon the recommendation of a board of officers and noncommissioned officers, appointed by the Adjutant General, to United States citizens and governmental officials who render outstanding service to the North Carolina national guard. (1977, c. 796.)

§ 127A-45.5. North Carolina National Guard Meritorious Civilian Service Award. — There is hereby created the North Carolina National Guard Meritorious Civilian Service Award which shall consist of a certificate of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina or a designated representative, who shall not be below the grade of general officer, is authorized to confer this award. This award may be granted to individuals, organizations, corporations, associations and other groups, making a substantial contribution to the North Carolina national guard. (1977, c. 796.)

§ 127A-46. Authority to wear medals, ribbons and other awards. — The Adjutant General may prescribe those medals, ribbons and other awards and decorations which may be worn by members of the militia, not inconsistent with regulations of the respective armed services of the United States. (1939, c. 344; 1959, c. 218, s. 16; 1967, c. 563, s. 4; 1975, c. 604, s. 2.)

§ 127A-47. 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; 1975, c. 604, s. 2.)

§ 127A-48. 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 ($200.00); 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; 1975, c. 604, s. 2.)

§ 127A-49. Special courts-martial; appointments, power and authority. — In the national guard, not in the service of the United States, special courts-martial may be appointed by:

(1) The commander of a brigade, regiment, comparable or higher command of the North Carolina army national guard;

(2) The commander of a wing, group, separate squadron, comparable or higher command of the North Carolina air national guard;

(3) The commander or officer in charge of any North Carolina national guard command when empowered by the Governor or the Adjutant General of North Carolina.

Except as to commissioned officers, such courts-martial shall have the power and authority to try any person subject to military law for any crimes or offenses within the jurisdiction of a general military court. Such courts-martial shall have the same powers of punishment as general courts-martial except that fines imposed by such courts-martial shall not exceed one hundred dollars ($100.00), and such courts-martial shall not have the power of dismissal from the national guard. (1917, c. 200, s. 57; C. S., s. 6827; 1957, c. 136, s. 8; 1963, c. 1018, s. 3; 1973, c. 1123; 1975, c. 604, s. 2.)

§ 127A-50. Summary courts-martial. — In the national guard, not in the service of the United States, summary courts-martial may be appointed by the commander 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 personnel 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; 1975, c. 604, s. 2.)

§ 127A-51. Nonjudicial punishment. — Any commander of the national guard, not in the service of the United States, may, in addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in like manner and to the extent prescribed by Article 15 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, 1951, as amended from time to time. (1957, c. 136, s. 10; 1975, c. 604, s. 2.)

§ 127A-52. Jurisdiction of courts-martial. — The jurisdiction of courts-martial of the national guard, not in the service of the United States, except as to punishments, shall be as prescribed by the Manual for Courts-Martial, United States, 1951, as amended from time to time. Such courts-martial shall have jurisdiction to try accused persons for offenses committed while serving without the State and while going to and returning from such service without the State in like manner and to the same extent as while serving within the State. (1957, c. 136, s. 10; 1975, c. 604, s. 2.)

§ 127A-53. Manual for Courts-Martial. — Trials and proceedings by all courts and boards shall be in accordance with the plans and procedures laid down in the Manual for Courts-Martial, United States, 1951, as amended from time to time. (1917, c. 200, s. 64; C. S., s. 6831; 1957, c. 136, s. 14; 1975, c. 604, s. 2.)

§ 127A-54. Sentences; where executed. — All sentences to confinement imposed by any military court of this State shall be executed in such prisons as the court may designate. (1917, c. 200, s. 61; C. S., s. 6832; 1975, c. 604, s. 2.)

§ 127A-55. Forms for courts-martial procedure. — In the national guard, not in the service of the United States, forms for courts-martial procedure shall be substantially as those set forth in the Appendices, Manual for Courts-Martial, United States, 1951, as amended. (1957, c. 136, s. 13; 1975, c. 604, s. 2.)

§ 127A-56. Powers of courts-martial. — In the national guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books, papers, records and other articles subject to a subpoena duces tecum, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. He shall also have power to punish for contempt occurring in the presence of the court.

In addition to the power to issue warrants set forth in the first paragraph of this section, the arrest and confinement of persons subject to this Chapter may be accomplished by the means and under the procedures set forth in Articles 9 and 10 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, 1951, as amended from time to time. (1917, c. 200, s. 60; C. S., s. 6830; 1957, c. 136, s. 12; 1975, c. 604, s. 2.)

§ 127A-57. Execution of processes and sentences. — All processes and sentences of any of the military courts of this State shall be executed by any sheriff, deputy sheriff, or police officer into whose hands the same may be placed for service or execution, and such officer shall make return thereof to the officer issuing or imposing the same. Such service or execution of process or sentence shall be made by such officer without tender or advancement of fee therefor; but all costs in such cases shall be paid from funds appropriated for military purposes. The actual necessary expenses of conveying a prisoner from one county in the State to another, when the same is authorized and directed by the Adjutant General of the State, shall be paid from the military funds of the State upon a warrant approved by the Adjutant General. (1917, c. 200, s. 62; C. S., s. 6833; 1973, c. 108, s. 80; 1975, c. 604, s. 2.)

§ 127A-58. Sentence of confinement. — 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; 1975, c. 604, s. 2.)

§ 127A-59. Commitments. — When any sentence to fine or imprisonment shall be imposed by any military court of this State, it shall be the duty of the president of said court, or summary court officer, upon the approval of the findings and sentence of such court, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, the amount of fine or manner, place, and duration of confinement, and deliver such certificate to the sheriff, or deputy sheriff, or

police officer of the county wherein the sentence is to be executed; and it shall thereupon be the duty of such officer to carry said sentence into execution in the manner prescribed by law for the collection of fines or commitment to service of terms of imprisonment in criminal cases determined in the courts of this State. (1917, c. 200, s. 63; C. S., s. 6834; 1973, c. 108, s. 81; 1975, c. 604, s. 2.)

§ 127A-60. Sentence of dismissal. — No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial not in the service of the United States, shall be executed until approved by the Governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia. (1917, c. 200, s. 65; C. S., s. 6835; 1975, c. 604, s. 2.)

§ 127A-61. Disposition of fines. — Fines imposed by courts-martial under this Chapter shall be disposed of as prescribed in Article IX, Sec. 7, of the Constitution of North Carolina. (1975, c. 604, s. 2.)

§§ 127A-62 to 127A-66: Reserved for future codification purposes.

ARTICLE 4.

Naval Militia.

§ 127A-67. Organization and equipment. — The organization of the naval militia shall be units of convenient size, in each of which the number and rank of officers and the distribution of the total enlisted strength among the several ratings of petty officers and other enlisted personnel shall be such as are prescribed by the Secretary of the Navy, who may also prescribe the number of officers and the number of petty officers and other enlisted personnel required for the organization of such units into larger bodies for administrative and other purposes, and the arms and equipment of the naval militia shall be those which are now or may hereafter be prescribed by the Secretary of the Navy. (1917, c. 200, s. 66; C. S., s. 6836; 1975, c. 604, s. 2.)

§ 127A-68. Officers appointed to naval militia. — Officers of the United States navy and marine corps may, with the approval of the Secretary of the Navy, be appointed by the Governor and commissioned as officers of the naval militia. (1917, c. 200, s. 67; C. S., s. 6837; 1975, c. 604, s. 2.)

§ 127A-69. Officers assigned to duty. — Line officers of the naval militia may be for line duties only, for engineering duties only, or for aeronautic duties only. (1917, c. 200, s. 68; C. S., s. 6838; 1975, c. 604, s. 2.)

§ 127A-70. Discipline in naval militia. — The naval militia shall be subject to the system of discipline prescribed for the United States navy and marine corps, and the commanding officer of a naval militia battalion or brigade, or a naval militia officer in command of naval militia forces on shore or on any vessel of the navy loaned to the State, or on any vessel on which such forces are training, whether within or without the State, or wherever, either within or without the State, naval militia forces of the State shall be assembled pursuant to orders, shall have power without trial by courts-martial to impose upon members of the naval militia the punishments which the commanding officer of a vessel of the navy is authorized by law to impose. (1917, c. 200, s. 69; C. S., s. 6839; 1975, c. 604, s. 2.)

§ 127A-71. Disbursing and accounting officer. — The Governor shall appoint a disbursing officer, approved by and of such rank as may be prescribed by the Secretary of the Navy, to perform such duties as the Secretary of the Navy may prescribe. The Governor shall also appoint the above described disbursing officer, or such other officer of the pay corps of the naval militia as he may elect, as accounting officer for each battalion thereof, or at his option for each larger unit or combination of units of the same, who shall be responsible for the proper accounting for all public property issued to and for the use of such battalion or larger unit or combination of units. (1917, c. 200, s. 70; C. S., s. 6840; 1975, c. 604, s. 2.)

§ 127A-72. Rendition of accounts. — Accounting officers shall render accounts as prescribed by the Governor or by the Secretary of the Navy, and shall be required to give good and sufficient bond to the State and to the United States, in such sums as the Governor or the Secretary of the Navy may direct, and conditioned upon the faithful accounting for all public property and for the safekeeping of such part thereof as may be in the personal custody of such officer. Accounting officers may issue any or all such property to other officers or enlisted personnel of the naval militia under such rules and regulations as may be prescribed. (1917, c. 200, s. 71; C. S., s. 6841; 1975, c. 604, s. 2.)

§ 127A-73. Disbandment of naval militia. — No part of the naval militia which is entitled to compensation under the provisions of an act of Congress approved August 29, 1916, shall be disbanded without the consent of the President. (1917, c. 200, s. 86; C. S., s. 6842; 1975, c. 604, s. 2.)

§ 127A-74. Courts-martial for naval militia. — Courts-martial for the naval militia, not in the service of the United States, shall be organized, have the same powers, functions and authorities, and follow the same procedures as courts-martial for the national guard as set forth in G.S. 127A-47 through 127A-61. (1975, c. 604, s. 2.)

§§ 127A-75 to 127A-79: Reserved for future codification purposes.

ARTICLE 5.

State Defense Militia.

§ 127A-80. Authority to organize and maintain State defense militia of North Carolina. — (a) The Governor is authorized 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 appropriations available; to exercise discipline in the same manner as is now or may hereafter be provided by the laws of the State for the national guard. Such military force shall be subject to the call or the order of the Governor to execute the law and secure the safety of persons and property, suppress riots or insurrections, repel invasions or provide disaster relief, 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 be drafted as provided by law. To be eligible for service in an enlisted status, a person must be at least 17 years of

age and under 50 years of age, or under 64 years of age and a former member of the armed forces of the United States. To be eligible for service as an officer, a person must be at least 18 years of age and under 64. 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 G.S. 127A-117, 127A-118, [and] 127A-139 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.

(h) All payments are to be made by the Secretary of the Department of Crime Control and Public Safety 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 commander 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 Secretary of the Department of Crime Control and Public Safety. Failure on the part of any commander to submit promptly when due the financial statement of the 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; 1975, c. 604, s. 2; 1977, c. 70, s. 2; c. 553.)

Editor's Note. — The first 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" in subsections (h) and (i).

The second 1977 amendment, in the third sentence of subsection (b), substituted "person" for "male" and deleted "and a female at least 21 years of age and under 64" following "under 64."

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-81. 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 Secretary of the Department of Crime Control and Public Safety 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. 127A-80 shall apply. The training of the cadre need not be in accordance with training regulations issued by the Department of Defense. The provisions of G.S. 127-58 [127A-80] (c), (d), (g), (h) and (i) shall also apply to cadres.

(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; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" in the second sentence of subsection (b).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§§ 127A-82 to 127A-86: Reserved for future codification purposes.

ARTICLE 6.

Unorganized Militia.

§ 127A-87. Unorganized militia ordered out for service. — The commander in chief may at any time, in order to execute the law, secure the safety of persons and property, suppress riots or insurrections, repel invasions or provide disaster relief, 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 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 or 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; 1975, c. 604, s. 2.)

§ 127A-88. 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; 1975, c. 604, s. 2.)

§ 127A-89. Draft of unorganized militia. — If the unorganized militia is ordered out by draft, the Governor shall designate the persons in each county to make the draft, and prescribe rules and regulations for conducting the same. (1917, c. 200, s. 48; C. S., s. 6862; 1975, c. 604, s. 2.)

§ 127A-90. Punishment for failure to appear. — Every member of the militia ordered out for duty, or who shall volunteer or be drafted, who does not appear at the time and place ordered, shall be liable to such punishment as a court-martial may determine. (1917, c. 200, s. 49; C. S., s. 6863; 1975, c. 604, s. 2.)

§ 127A-91. 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 units operating in R.O.T.C. or similar schools under the supervision of armed forces instructors. (1937, c. 449; 1963, c. 1016, s. 2; 1975, c. 604, s. 2.)

§§ 127A-92 to 127A-96: Reserved for future codification purposes.

ARTICLE 7.

Regulations as to Active Service.

§ 127A-97. National guard and naval militia first ordered out. — In all cases the national guard and naval militia as provided for in this Chapter shall be first ordered into service. (1917, c. 200, s. 44; C. S., s. 6857; 1975, c. 604, s. 2.)

§ 127A-98. Regulations enforced on active State service. — Whenever any portion of the militia shall be called into active State service to execute the law, secure the safety of persons and property, suppress riots or insurrections, repel invasions or provide disaster relief, 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 part of this Chapter until said forces shall be relieved from such duty. As to offenses committed when such provisions of the Uniform Code of Military Justice of the United States are so enforced, 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 shall extend to the taking of life shall in any case be inflicted except in case 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; 1975, c. 604, s. 2.)

§ 127A-99. Regulations governing unorganized militia. — Whenever any part of the unorganized militia is ordered out, it shall be governed by the same rules and regulations and be subject to the same penalties as the national guard or naval militia. (1917, c. 200, s. 35; C. S., s. 6859; 1975, c. 604, s. 2.)

§§ 127A-100 to 127A-104: Reserved for future codification purposes.

ARTICLE 8.

Pay of Militia.

§ 127A-105. Rations and pay on State service. — The militia of the State, both officers and enlisted personnel, when called into the service of the State by the Governor 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, provided that no officer or enlisted personnel shall receive less than 12 times the minimum hourly wage per day as provided for in G.S. 95-87. (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; 1975, c. 604, s. 2.)

§ 127A-106. Paid by the State. — When the militia or any portion thereof shall be ordered by the Governor into State service, the pay, subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor and warrant of the auditor. (1917, c. 200, s. 52; C. S., s. 6866; 1975, c. 604, s. 2.)

§ 127A-107. Rate of pay for other service. — The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted member of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted member shall be paid out of the appropriations made to the Department of Crime Control and Public Safety. Such officers and enlisted members shall receive the same rate of pay as officers and enlisted members of the same grade and like service of the regular service, provided that no such officer or enlisted member shall receive less than 12 times the minimum hourly wage per day as provided for in G.S. 95-87. Officers and enlisted members when on duty in connection with examining boards, efficiency boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and subsistence prescribed for lawful State Boards and commissions generally for such duty. Officers and enlisted members serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted member who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s. 51; C. S., s. 6865; 1935, c. 451; 1949, c. 1130, s. 4; 1959, c. 218, s. 18; 1963, c. 1019, s. 1; 1969, c. 986; 1971, c. 204; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" at the end of the first sentence.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-108. Pay and care of soldiers, airmen and sailors disabled in service. — A member of the national guard, the State defense militia, or the naval militia who without fault or negligence on his part is disabled through illness, injury, or disease contracted or incurred while on duty or by reason of duty in the service of the State or while reasonably proceeding to or returning from such duty shall receive the actual necessary expenses for care and medicine and medical attention at the expense of the State and if such shall temporarily incapacitate him for pursuing his usual business or occupation he shall receive during such incapacity the pay and allowances as are provided for the same grade and rating in like circumstances in the active armed forces of the United States. If such member is permanently disabled, he shall receive the pensions and rewards that persons under similar circumstances in the military service of the United States receive from the United States. In case any such member shall die as a result of such injury, illness or disease within one year after it has been incurred or contracted, the surviving spouse, minor children, or dependent parents of the member shall receive such pension and rewards as persons under similar circumstances receive from the United States.

The cost incurred by reason of this section shall be paid out of the Contingency and Emergency Fund, or such other fund as may be designated by law.

The Adjutant General, with the approval of the Governor, shall make and publish such regulations pursuant to this section as may be necessary for its implementation. Before the name of any person is placed on the disability or pension rolls of the State under this section, proof shall be made in accordance with such regulations that the applicant is entitled to such care, pension, or reward.

Nothing herein shall in any way limit or condition any other payment to such member as by law may be allowed: Provided, however, any payments made under the provisions of Chapter 97 of the General Statutes or under federal statutes as now or hereafter amended shall be deducted from the payments

made under this section. (1917, c. 200, s. 54; C. S., s. 6868; 1959, c. 218, s. 19; c. 763; 1965, c. 1058; 1975, c. 604, s. 2.)

§ 127A-109. Pay of general and field officers. — General and field officers when away from their home stations visiting the organizations of their commands, for inspection and instruction under orders from proper authority, shall receive actual necessary expenses and the pay of their rank. (1917, c. 200, s. 53; C. S., s. 6867; 1975, c. 604, s. 2.)

§ 127A-110. Proceedings against third party injuring or killing guard personnel. — (a) The right to compensation and other benefits under G.S. 127A-108 shall not be affected by the fact that the injury or death was caused under circumstances creating a liability in some person other than the State to pay damages therefor, such person hereinafter being referred to as the "third party." The respective rights and interests of the guard member under this Article, and the State, if any, in respect of the common-law cause of action against such third party and the damages recovered shall be as set forth in this section.

(b) The guard member or personal representative if guard member be dead, shall have the exclusive right to proceed to enforce the liability of the third party by appropriate proceedings if such proceedings are instituted not later than 12 months after the date of injury or death, whichever is later. During said 12-month period, and at any time thereafter if summons is issued against the third party during said 12-month period, the guard member or personal representative shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of such injury or death, subject to the provisions of (h) below.

(c) If settlement is not made and summons is not issued within said 12-month period, then all rights of the guard member, or personal representative if guard member be dead, against the third party shall pass by operation of the period fixed by the statute of limitations applicable to such rights and if the State shall not have settled with or instituted proceedings against the third party within such time, then all such rights shall revert to the guard member or personal representative 60 days before the expiration of the applicable statute of limitations.

(d) The person in whom the right to bring such proceeding or make settlement is vested shall, during the continuation thereof, also have the exclusive right to make settlement with the third party and the release of the person having the right shall fully acquit and discharge the third party except as provided by (h) below. A proceeding so instituted by the person having the right shall be brought in the name of the guard member or personal representative and the State shall not be a necessary or proper party thereto. If the guard member or personal representative should refuse to cooperate with the State by being the party plaintiff, then the action shall be brought in the name of the State and the guard member or personal representative shall be made a party plaintiff or party defendant by order of court.

(e) The amount of compensation and other benefits paid or payable on account of such injury or death shall not be admissible in evidence in any proceeding against the third party. If the third party defending such proceeding, by answer duly served on the State, sufficiently alleges that actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death, then an issue shall be submitted to the jury in such case as to whether actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death. The State shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the jury as to this issue as fully

as though it were a party although not named or joined as a party to the proceeding. Such issue shall be the last of the issues submitted to the jury. If the verdict shall be that actionable negligence of the State did join and concur with that of the third party in producing the injury or death, then the court shall reduce the damages awarded by the jury against the third party by the amount which the State would otherwise be entitled to receive therefrom by way of subrogation hereunder and the entire amount recovered, after such reduction, shall belong to the guard member or personal representative free of any claim by the State and the third party shall have no further right by way of contribution or otherwise against the State, except any right which may exist by reason of an express contract of indemnity between the State and the third party, which was entered into prior to the injury to the guard member.

(f) (1) Any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of such injury or death shall be disbursed by order of the court for the following purposes and in the following order of priority:

a. First to the payment of actual court costs taxed by judgment.

b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and such fee shall not exceed one third of the amount obtained or recovered of the third party.

c. Third to the reimbursement of the State for all benefits by way of compensation or medical treatment expense paid or to be paid by the State pursuant to G.S. 127A-108.

d. Fourth to the payment of any amount remaining to the guard member or personal representative.

(2) The attorney fee paid under (f)(1) shall be paid by the guard member and the State in direct proportion to the amount each shall receive under (f)(1)c and (f)(1)d hereof and shall be deducted from such payments when distribution is made.

(g) In any proceeding against or settlement with the third party, every party to the claim for compensation shall have a lien to the extent of the party's interest under (f) hereof upon any payment made by the third party by reason of such injury or death, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise and such lien may be enforced against any person receiving such funds. Neither the guard member or personal representative nor the State shall make any settlement with or accept any payment from the third party without the written consent of the other and no release to or agreement with the third party shall be valid or enforceable for any purpose unless both State and guard member or personal representative join therein; provided, that this sentence shall not apply if the State is made whole for all benefits paid or to be paid by him under this Chapter less attorney's fees as provided by (f)(1) and (2) hereof and the release to or agreement with the third party is executed by the guard member. The Attorney General shall have the right on behalf of the State to reduce by compromise its claim.

(h) Institution of proceedings against or settlement with the third party, or acceptance of benefits under this Chapter, shall not in any way or manner affect any other remedy which any party to the claim for compensation may have except as otherwise specifically provided in this Chapter, and the exercise of one remedy shall not in any way or manner be held to constitute an election of remedies so as to bar the other. (1967, c. 1081, s. 1; 1975, c. 604, s. 2.)

§§ 127A-111 to 127A-115: Reserved for future codification purposes.

ARTICLE 9.

Privilege of Organized Militia.

§ 127A-116. Leaves of absence for State officers and employees. — The Governor or his designee shall promulgate appropriate policy and regulations relating to leaves of absence for short periods of military training and for State military duty of all officers and employees of the State and its political subdivisions, including officers and employees of public educational facilities under the sponsorship of the State, without loss of pay, time or efficiency rating. (1917, c. 200, s. 88; C. S., s. 6869; 1937, c. 224, s 1; 1949, c. 1274; 1975, c. 604, s. 2.)

§ 127A-117. Contributing members. — Each organization of the national guard and naval militia may, besides its regular and active members, enroll contributing members on payment in advance by each person desiring to become such contributing member of not less than ten dollars ($10.00) per annum, which money shall be paid into the unit fund. Each contributing member shall be entitled to receive from the commanding officer thereof a certificate of membership. (1917, c. 200, s. 90; C. S., s. 6871; 1967, c. 218, s. 3; 1975, c. 604, s. 2.)

§ 127A-118. Organizations may own property; actions. — Organizations of the national guard and naval militia shall have the right to own and keep real and personal property, which shall belong to the organization; and the commanding officer of any organization may recover for its use debts or effects belonging to it, or damages for injury to such property, action for such recovery to be brought in the name of the commanding officer thereof before any court of justice within the State having jurisdiction; and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but upon motion of the commander succeeding him such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (1917, c. 200, s. 92; C. S., s. 6872; 1975, c. 604, s. 2.)

§ 127A-119. When families of soldiers, airmen and sailors 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; 1975, c. 604, s. 2.)

§§ 127A-120 to 127A-124: Reserved for future codification purposes.

ARTICLE 10.

Care of Military Property.

§ 127A-125. Custody of military property. — All public military property, except when used in the performance of military duty, shall be kept in armories, or other properly designated places of deposit; and it shall be unlawful for any person charged with the care and safety of said public property to allow the same out of his custody, except as above specified. (1917, c. 200, s. 38; C. S., s. 6874; 1975, c. 604, s. 2.)

§ 127A-126. Other suitable storage facilities. — 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 at suitable storage facilities as determined by the Adjutant General. (1917, c. 200, s. 39; C. S., s. 6875; 1959, c. 218, s. 20; 1963, c. 1019, s. 3; 1975, c. 604, s. 2.)

§ 127A-127. Property kept in good order. — Every officer and enlisted member 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; 1975, c. 604, s. 2.)

§ 127A-128. Equipment and vehicles. — Equipment and vehicles issued by the Department of Defense to the national guard or State defense militia shall be used solely for military purposes, except in those specific cases where nonmilitary use is authorized by the Department of Defense and/or the Governor. Necessary expense in maintaining such equipment and vehicles, not provided for by the federal government shall be a proper charge against State funds appropriated for the national guard: Provided, such expense shall be specifically authorized by the Governor and certified by the Adjutant General. (1917, c. 200, s. 41; C. S., s. 6878; 1921, c. 120, s. 9; 1959, c. 218, s. 23; 1963, c. 1019, s. 4; 1967, c. 563, s. 5; 1975, c. 604, s. 2.)

§ 127A-129. Transfer of property. — All officers accountable or responsible for public funds, property, or books, before being relieved from the duty, shall turn over the same according to the regulations prescribed by the Governor. (1917, c. 200, s. 42; C. S., s. 6879; 1975, c. 604, s. 2.)

§ 127A-130. 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 member, and the pay of such officers and enlisted members 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; 1975, c. 604, s. 2.)

§ 127A-131. Unlawful conversion or willful destruction of military property. — (a) If any person shall willfully or wantonly destroy or injure, willfully retain after demand made or otherwise convert to his own use any property of the State or of the United States issued for the purpose of arming or equipping the militia of the State or if any person shall purchase any property of the State or of the United States knowing it to be unlawfully obtained, he shall be guilty of a misdemeanor and shall be punished as provided in G.S. 14-3.

(b) Any person, firm or corporation receiving in pledge or buying from any other person, firm or corporation for the purpose of resale any goods, to include arms, ammunition, explosives, equipment, clothing, supplies and materials, which may reasonably be thought to be the property of the armed forces of the United States and their reserve components or of the militia of the State of North Carolina, shall keep a register and shall enter therein a true and accurate record of each purchase, showing the name, social security number and address of the person from whom purchased, the name and address of the firm or corporation from whom purchased, together with the amount paid for each item or lot of

small items, the date of purchase, the serial numbers of all items bearing serial numbers, and any other marks, brands or descriptions which will serve to identify the items purchased. The register shall be at all times open to the inspection of the public. Any person, firm or corporation failing to comply with this provision shall be guilty of a misdemeanor; and any person, firm or corporation making a false entry in such register shall be guilty of a misdemeanor. (1876-7, c. 272, s. 19; Code, s. 3274; Rev., ss. 3536, 3537; C. S., ss. 6881, 6882; 1959, c. 218, s. 25; 1963, c. 1019, s. 6; 1975, c. 604, s. 2.)

§§ 127A-132 to 127A-136: Reserved for future codification purposes.

ARTICLE 11.

Support of Militia.

§ 127A-137. 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 appropriate 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; 1975, c. 604, s. 2.)

§ 127A-138. Local appropriations. — Every municipality and county within the State is hereby authorized and empowered to appropriate for the benefit of any unit or units of the militia such amounts of public funds from year to year as the governing body of such municipality or county may deem wise, patriotic and expedient; and is further authorized, either alone or in connection with others, to provide heat, electricity, water, telephone service and other costs of operation and maintenance of any armory. Such appropriations may be funded by the levy of property taxes pursuant to G.S. 153A-149 and 160A-209 or by the allocation of other revenues whose use is not otherwise restricted by law. (1947, c. 1010, s. 8; 1975, c. 604, s. 2.)

§ 127A-139. Allowances made to different organizations and personnel. — (a) There may be allowed each year to the following officers, under rules and regulations prescribed by the Secretary of Crime Control and Public Safety, as follows: to general officers, and commanders of divisions, 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 divisions, 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 may be allowed annually to the supply sergeant of each company, battery, troop, detachment, and similar organizations, a sum of money not to exceed one hundred dollars ($100.00) for services satisfactorily performed.

(c) There shall be allowed annually sufficient funds to be allocated by the Secretary of Crime Control and Public Safety among the federally recognized units of the national guard and their headquarters, NCNG State Pistol Team, NCNG State Rifle Team, NCARNG Aviation Support Facility, and NCARNG Aviation Flight Activity for administrative and operating expenses, including

heat, electricity, telephone, postage, office supplies and equipment, minor repairs and replacement of equipment, and such other expenses and special items of equipment not otherwise provided as may be authorized in accordance with national guard rules and regulations.

(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 is duly performed by all organizations named.

(e) The commanding officers 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 Secretary through 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. (1917, c. 200, s. 97; 1919, c. 311; C. S., s. 6889; 1921, c. 120, s. 11; 1923, c. 24; 1924, c. 6; 1927, c. 227, s. 2; 1949, c. 1130, s. 5; 1951, c. 1144, s. 1; 1953, c. 1246; 1959, c. 421; 1963, c. 1020; 1967, c. 563, s. 6; 1973, c. 1460; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Secretary of Military and Veterans Affairs" in the first sentence of subsection (a) and near the beginning of subsection (c).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§§ 127A-140 to 127A-144: Reserved for future codification purposes.

ARTICLE 12.

General Provisions.

§ 127A-145. 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 form as may from time to time be prescribed. (1917, c. 200, s. 21; C. S., s. 6890; 1963, c. 1019, s. 10; 1975, c. 604, s. 2.)

§ 127A-146. Officer to give notice of absence. — When any officer shall have occasion to be absent from his usual residence one week or more, he shall notify the officer next in command, and also his next superior officer in command, of his intended absence, and shall arrange for the officer next in command to handle and attend to all official communications. (1917, c. 200, s. 22; C. S., s. 6891; 1975, c. 604, s. 2.)

§ 127A-147. 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; 1975, c. 604, s. 2.)

§ 127A-148. Commander may prevent trespass and disorder. — The commander upon any occasion of duty may place in arrest during the

continuance thereof any person who shall trespass upon the campground, parade ground, armory, or other place devoted to such duty, or who shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty. He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale, beer, or cider, the holding of huckster or auction sales, and all gambling within the limits of the post, campground, place of encampment, parade, or drill under his command, or within such limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion abate as common nuisance all such sales. (1917, c. 200, s. 94; C. S., s. 6893; 1975, c. 604, s. 2.)

§ 127A-149. 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; 1975, c. 604, s. 2.)

§ 127A-150. Immunity of guardsmen from civil and criminal liability. — (a) A member of the North Carolina national guard or State defense militia, while acting in aid of civil authorities and in the line of duty, shall have the immunities of a law-enforcement officer.

(b) Whenever members of the North Carolina national guard or State defense militia are called upon to execute the laws, engage in disaster relief, suppress or prevent actual or threatened riot or insurrection, repel invasion, apprehend or disburse [disperse] any sniper, rioters, mob or unlawful assembly, they shall have the immunities of a law-enforcement officer.

(c) Any civil claim against a member of the national guard or State defense militia allegedly arising from the action or inaction of such member of the national guard or State defense militia while in line of duty shall be filed within two years of the date of the occurrence or forever barred. (1969, c. 969; 1975, c. 604, s. 2.)

§ 127A-151. Organizing company without authority. — If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the State, or shall exercise or attempt to exercise the power or authority of a military officer in this State, without holding a commission from the Governor, he shall be guilty of a misdemeanor. (1893, c. 374, s. 38; Rev., s. 3538; C. S., s. 6894; 1975, c. 604, s. 2.)

§ 127A-152. Placing name on muster roll wrongfully. — If any officer of the militia of the State shall knowingly or willfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted man who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, he shall be guilty of a misdemeanor. (1893, c. 374, s. 33; Rev., s. 3539; C. S., s. 6895; 1975, c. 604, s. 2.)

§ 127A-153. Protection of uniform. — (a) The wearing of any military uniform of the United States government by members of the militia shall be pursuant to applicable regulations promulgated by the respective armed services of the United States and regulations of the Adjutant General of North Carolina not inconsistent with federal uniform regulations.

(b) The wearing of any military uniform of the North Carolina State government by members of the militia shall be pursuant to applicable regulations promulgated by the Adjutant General of North Carolina.

(c) Members of the militia who violate the regulations referred to in (a) and (b) above shall, upon conviction by a court-martial, be punished by a fine not exceeding fifty dollars ($50.00) or by imprisonment not exceeding 30 days, or by both fine and imprisonment, for each offense.

(d) Persons not subject to courts-martial who violate the regulations referred to in (a) and (b) above may be charged and tried in the State courts and upon conviction shall be punished as provided in (c) above. (1921, c. 120, s. 12; C. S., s. 6895(a); 1963, c. 1017; 1975, c. 604, s. 2.)

§ 127A-154. Upkeep of properties. — There shall be paid from the appropriations from the national guard such amounts as may be necessary for the maintenance, upkeep, and improvement of State military properties and facilities. Provided, such expenditures shall be approved and authorized by the Governor. (1921, c. 120, s. 13; C. S., s. 6895(b); 1975, c. 604, s. 2.)

§ 127A-155. When officers authorized to administer oaths. — Officers of the national guard are authorized to administer oaths in all circumstances pertaining to any military matter whenever an oath is required. (1949, c. 1130, s. 6; 1975, c. 604, s. 2.)

§§ 127A-156 to 127A-160: Reserved for future codification purposes.

ARTICLE 13.

Armories.

§ 127A-161. Definitions. — As used in this Article, the following terms mean:

(1) Armory: Any building or building complex and related facilities, including the lands for them, which are intended to be utilized by the militia for training, administration, storage, and the maintenance and servicing of equipment.

(2) Armory site: That land, meeting federal and State specifications, upon which an armory may be constructed.

(3) Department: The North Carolina Department of Crime Control and Public Safety.

(4) Facilities: Those adjuncts to an armory, including but not limited to yards, storage buildings, sheds, ramps, racks, target ranges, furniture, fixtures and other equipment and installations.

(5) Funds: Any moneys appropriated by any municipality, county, the State or the United States government and made available for the purpose of acquiring armory sites or constructing or repairing any armory, warehouse, or other facility for the use of any unit or for any other purpose in connection with the housing, training, instruction or promotion of the interest of any unit.

(6) Municipality: Any incorporated city, town or village.

(7) Unit: Any organizational entity of the militia. (1947, c. 1010, s. 1; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" in subdivision (3).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-162. Authority to foster development of armories and facilities. — The Department of Crime Control and Public Safety is authorized and empowered to foster the development in North Carolina of adequate armories and other necessary facilities for the proper housing, instruction, training and administration of all units and facilities necessary for the proper protection, care, maintenance, repair, issue and upkeep of public and military property issued to or for the use of any unit. (1947, c. 1010, s. 4; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs."

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-163. Powers of Department specified. — The Department of Crime Control and Public Safety is further authorized and empowered:

(1) To act as an agency of the State of North Carolina for the purpose of setting up and administering any statewide plan for the acquisition of armories and armory sites, for the construction and maintenance of armories and for providing facilities which are now or may be necessary in order to comply with any federal law and in order to receive, administer and disburse any funds which may be provided by act of Congress for such purpose;

(2) As such agency of the State of North Carolina, to promulgate statewide plans for the acquisition of armories and armory sites, for the construction and maintenance of armories and such other facilities as may be found desirable or necessary to meet the requirements and receive the benefits of any federal legislation with respect thereto;

(3) To receive and administer any funds which may be appropriated by any act of Congress or otherwise for the acquisition of armories and armory sites; for the construction and maintenance of armories and for providing facilities, which may at any time become available for such purposes;

(4) To receive and administer any other funds which may be available in furtherance of any activity in which the Department of Crime Control and Public Safety is authorized and empowered to engage under the provisions of this Article; and

(5) To adopt such rules and regulations as may be necessary to carry out the intent and purpose of this Article. (1947, c. 1010, s. 5; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" in the introductory language and in subdivision (4).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-164. Power to acquire land, make contracts, etc. — In furtherance of the duties, power, and authority given herein, the Department of Crime Control and Public Safety is authorized and empowered within the limitations of G.S. 143-341 to accept and hold title to real property in the name of the State of North Carolina, and to enter in contracts and do any and all things necessary to carry out any statewide programs for the acquisition of armories and armory sites, the construction and maintenance of armories, and to provide facilities which may be considered by it as necessary for any unit and which may be authorized by act of Congress or otherwise. (1947, c. 1010, s. 6; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs."

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-165. Counties and municipalities may lease, convey or acquire property for use as armory. — Every municipality and county of the State of North Carolina is hereby authorized and empowered to lease or convey by deed to the State of North Carolina:

(1) Any existing armory and the land adjacent thereto;

(2) Any real property suitable for the construction of an armory, warehouse or other facility; and

(3) Any real property suitable for use in the administration, instruction and training of any unit.

Every municipality and county is further authorized and empowered to acquire any real property which may be suitable for use as an armory or for the construction of an armory thereon, or for any other purpose of a unit. The contracting of an indebtedness and the expenditure of public funds by any municipality or county to comply with the provisions of this Article are hereby declared to be a necessary expense and for a public purpose. (1947, c. 1010, s. 7; 1949, c. 1066, s. 1; 1975, c. 604, s. 2.)

§ 127A-166. Prior conveyances validated. — All conveyances of real property made before April 20, 1949, by any municipality or county of the State of North Carolina to the State of North Carolina for armory purposes are hereby validated and ratified in every respect. (1949, c. 1066, s. 2; 1975, c. 604, s. 2.)

§ 127A-167. Appropriations to supplement available funds authorized. — Any city or town and any county in the State, separately or jointly, may make appropriations to supplement available federal or State funds to be used for the construction of armory facilities for the North Carolina national guard. Appropriations made under authority of this Article shall be in such amounts and in such proportions as may be deemed adequate and necessary by the governing body of the county and/or municipality desiring to participate in the armory construction program. (1955, c. 1181, s. 1; 1975, c. 604, s. 2.)

§ 127A-168. Local financial support. — Each county and city in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1955, c. 1181, s. 2; 1961, c. 1042; 1973, c. 803, s. 12; 1975, c. 604, s. 2.)

§ 127A-169. Unexpended portion of State appropriation. — The unexpended portion of any appropriation from the general fund of the State for the purposes set out in this Article, remaining at the end of any biennium, shall not revert to the general fund of the State, but shall constitute part of a permanent fund to be expended from time to time in the manner and for the purposes set out in this Article. (1949, c. 1202, s. 2; 1975, c. 604, s. 2.)

§§ 127A-170 to 127A-174: Reserved for future codification purposes.

ARTICLE 14.

National Guard Mutual Assistance Compact.

§ 127A-175. Purposes. — (a) Provide for mutual aid among the party states in the utilization of the national guard to cope with emergencies.

(b) Permit and encourage a high degree of flexibility in the deployment of national guard forces in the interest of efficiency.

(c) Maximize the effectiveness of the national guard in those situations which call for its utilization under this Compact.

(d) Provide protection for the rights of national guard personnel when serving in other states on emergency duty. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§ 127A-176. Entry into force and withdrawal. — (a) This Compact shall enter into force when enacted into law by any two states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§ 127A-177. Definitions; mutual aid. — (a) As used in this Article:

(1) "Emergency" means an occurrence or condition, temporary in nature, in which police and other public safety officials and locally available national guard forces are, or may reasonably be expected to be, unable to cope with substantial and imminent danger to the public safety.

(2) "Requesting state" means the state whose governor requests assistance in coping with an emergency.

(3) "Responding state" means the state furnishing aid, or requested to furnish aid.

(b) Upon request of the governor of a party state for assistance in an emergency, the governor of a responding state shall have authority under this Compact to send without the borders of his state and place under the temporary command of the appropriate national guard or other military authorities of the requesting state all or any part of the national guard forces of his state as he may deem necessary, and the exercise of his discretion in this regard shall be conclusive.

(c) The governor of a party state may withhold the national guard forces of his state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

(d) Whenever national guard forces of any party state are engaged in another state in carrying out the purposes of this Compact, the members thereof so engaged shall have the same powers, duties, rights, privileges and immunities as members of national guard forces in such other state. The requesting state shall save members of the national guard forces of responding states harmless from civil liability for acts or omissions in good faith which occur in the performance of their duty while engaged in carrying out the purposes of this Compact, whether the responding forces are serving the requesting state within its borders or are in transit to or from such service.

(e) Subject to the provisions of subsections (f), (g) and (h) of this section, all liability that may arise under the laws of the requesting state, the responding state, or a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(f) Any responding state rendering aid pursuant to this Compact shall be reimbursed by the requesting state for any loss or damage to, or expense

incurred in the operation of any equipment answering a request for aid, and for the cost of the materials, transportation and maintenance of national guard personnel and equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense or other cost.

(g) Each party state shall provide, in the same amounts and manner as if they were on duty within their state, for the pay and allowances of the personnel of its national guard units while engaged without the state pursuant to this Compact and while going to and returning from such duty pursuant to this Compact. Such pay and allowances shall be deemed items of expense reimbursable under subsection (f) by the requesting state.

(h) Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its national guard forces in case such members sustain injuries or are killed within their own state, shall provide for the payment of compensation and death benefits in the same manner and on the same terms in case such members sustain injury or are killed while rendering aid pursuant to this Compact. Such compensation and death benefits shall be deemed items of expense reimbursable pursuant to subsection (f) of this section. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§ 127A-178. Delegation. — Nothing in this Compact shall be construed to prevent the governor of a party state from delegating any of his responsibilities or authority respecting the national guard, provided that such delegation is otherwise in accordance with law. For purposes of this Compact, however, the governor shall not delegate the power to request assistance from another state. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§ 127A-179. Limitations. — Nothing in this Compact shall:

(1) Expand or add to the functions of the national guard, except with respect to the jurisdictions within [which] such functions may be performed;

(2) Authorize or permit national guard units to be placed under the field command of any person not having the military or national guard rank or status required by law for the field command position in question. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§ 127A-180. Construction and severability. — This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§ 127A-181. Payment of liability to responding state. — Upon presentation of a claim therefor by an appropriate authority of a state whose national guard forces have aided this State pursuant to the Compact, any liability of this State pursuant to G.S. 127A-177(f) of this Compact shall be paid out of the general fund. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§ 127A-182. Status, rights and benefits of forces engaged pursuant to Compact. — In accordance with G.S. 127A-177(h) of this Compact, members of

the national guard forces of this State shall be deemed to be in State service at all times when engaged pursuant to this Compact, and shall be entitled to all rights and benefits provided pursuant to the laws of this State. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§ 127A-183. Injury or death while going to or returning from duty. — All benefits to be paid under G.S. 127A-177(h) of the foregoing Compact shall include any injury or death sustained while going to or returning from such duty. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§ 127A-184. Authority of responding state required to relieve from assignment or reassign officers. — Nothing in the foregoing Compact shall authorize or permit state officials or military officers of the requesting state to relieve from assignment or reassign officers or noncommissioned officers of national guard units of the responding state without authorization by the appropriate authorities of the responding state. (1969, c. 674, s. 1; 1975, c. 604, s. 2.)

§§ 127A-185 to 127A-189: Reserved for future codification purposes.

ARTICLE 15.

North Carolina National Guard Tuition Assistance Act of 1975.

§ 127A-190. Short title. — This Article shall be known and may be cited as the North Carolina National Guard Tuition Assistance Act of 1975. (1975, c. 917, s. 2.)

Editor's Note. — Session Laws 1975, c. 917, s. 9, makes the act effective July 1, 1975.

§ 127A-191. Purpose. — The General Assembly of North Carolina, recognizing that the North Carolina national guard is the only organized, trained and equipped military force subject to the control of the State, hereby establishes a program of tuition assistance for qualifying guard members for the purpose of encouraging voluntary membership in the guard, improving the educational level of its members, and thereby benefiting the State as a whole. (1975, c. 917, s. 3.)

§ 127A-192. Definitions. — (a) "Business or Trade School". — Any school within the State of North Carolina which is licensed by the State Board of Education and listed by that Board as an approved private business school or an approved private trade school.

(b) "Private Educational Institutions". — Any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within and licensed by the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of this Article.

(c) "Secretary". — The Secretary of Crime Control and Public Safety or his designee.

(d) "State Educational Institutions". — Any of the constituent institutions of the University of North Carolina, or any community college or technical institute operated under the provision of Chapter 115A or Article 3 of Chapter 116 of the General Statutes of North Carolina.

(e) "Academic Year". — Any period of 365 days beginning with the first day of enrollment for a course of instruction. (1975, c. 917, s. 4; 1977, c. 70, s. 2; c. 228, s. 1.)

Editor's Note. — The first 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Secretary of Military and Veterans Affairs" in subsection (c).

The second 1977 amendment added the definition of "academic year."

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 127A-193. Benefit. — The benefit provided under this Article shall consist of a monetary tuition assistance grant not to exceed five hundred dollars ($500.00) per academic year to qualifying members of the North Carolina national guard. Benefits shall be payable for a period of one academic year at a time, renewable at the option of the Secretary for a maximum of four academic years. (1975, c. 917, s. 5; 1977, c. 228, s. 2.)

Editor's Note. — The 1977 amendment deleted, at the end of this section, "or until the course of study being pursued has been completed, whichever comes first."

§ 127A-194. Eligibility. — (a) Active members of the North Carolina national guard who are enrolled or who shall enroll in any business or trade school, private educational institution or State educational institution shall be eligible to apply for this tuition assistance benefit: Provided, that the applicant has a minimum obligation of two years remaining as a member of the national guard from the end of the academic period for which tuition assistance is provided or that the applicant commit himself or herself to extended membership for at least two additional years from the end of said academic period.

(b) This tuition assistance benefit shall be applicable to students in the following categories:

(1) Students seeking to achieve completion of their secondary school education at a community college or technical institute.
(2) Students seeking trade or vocational training or education.
(3) Students seeking to achieve a two-year associate degree.
(4) Students seeking to achieve a four-year baccalaureate degree.
(5) Students seeking to achieve a graduate degree. (1975, c. 917, s. 6; 1977, c. 228, ss. 3, 4.)

Editor's Note. — The 1977 amendment deleted "who have completed a minimum of one year of satisfactory service and" following "North Carolina national guard" near the beginning of subsection (a) and added subdivision (5) of subsection (b).

§ 127A-195. Administration and funding. — (a) The Secretary of Crime Control and Public Safety is charged with the administration of the tuition assistance program under this Article. He may delegate administrative tasks to other persons within the Department of Crime Control and Public Safety as he deems best for the orderly administration of this program.

(b) The Secretary shall determine the eligibility of applicants, select the benefit recipients, establish the effective date of the benefit, and may suspend or revoke the benefit if he finds that the recipient does not maintain an adequate academic status, or if the recipient engages in riots, unlawful demonstrations,

the seizure of educational buildings, or otherwise engages in disorderly conduct, breaches of the peace, or unlawful assemblies. The Secretary shall maintain such records and shall promulgate such rules and regulations as he deems necessary for the orderly administration of this program. The Secretary may require of business or trade schools or State or private educational institutions such reports and other information as he may need to carry out the provisions of this Article and he shall disburse benefit payments for recipients upon certification of enrollment by the enrolling institutions.

(c) All benefit disbursements shall be made to the business or trade school or State or private educational institution concerned, for credit to the tuition account of each recipient.

(d) The participation by any business or trade school or private educational institution in this program shall be subject to the applicable provisions of this Article and to examination by the State Auditor of the accounts of the benefit recipients attending or having attended such private schools or institutions. The Secretary may defer making an award or may suspend an award in any business or trade school or private educational institution which does not comply with the provisions of this Article relating to said institutions. The manner of payment to any business or trade school or private educational institution shall be as prescribed by the Secretary.

(e) Irrespective of other provisions of this Article, the Secretary may prescribe special procedures for adjusting the accounts of benefit recipients who, for reasons of illness, physical inability to attend classes or for other valid reason satisfactory to the Secretary, may withdraw from any business or trade school or State or private educational institution prior to the completion of the term, semester, quarter or other academic period being attended at the time of withdrawal. (1975, c. 917, s. 7; 1977, c. 70, s. 2.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Crime Control and Public Safety" for "Military and Veterans Affairs" in the first and second sentences of subsection (a).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

Chapter 128.

Offices and Public Officers.

ARTICLE 1.

General Provisions.

§ 128-1.1. Dual-office holding allowed.

(d) The term "elective office," as used herein, shall mean any office filled by election by the people when the election is conducted by a county or municipal board of elections under the supervision of the State Board of Elections. (1971, c. 697, s. 2; 1975, c. 174.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, added subsection (d). As the rest of the section was not changed by the amendment, only subsection (d) is set out.

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

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

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

ARTICLE 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions. — The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

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

(10) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (2) of this section, including employees of any light and water board or commission, and full-time employees of any housing authority created and operating under and by virtue of Chapter 157 of the General Statutes, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. "Employee" shall also mean all full-time, paid firemen who are employed by any fire department that serves a city or county or any part thereof and that is supported in whole or in part by municipal or county funds. In all cases of doubt the Board of Trustees shall decide who is an employee.

(11) "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. "Employer" shall also mean any fire department that serves a city or county or any part thereof, and that is supported in whole or in part by municipal or county funds.

(1975, 2nd Sess., c. 983, s. 125; 1977, c. 316, ss. 1, 2.)

Local Modification. — By virtue of Session Laws 1975, c. 180, s. 2, Morganton should be stricken from the Replacement Volume.

Editor's Note. —

The 1975, 2nd Sess., amendment, effective July 1, 1976, substituted "four" for "five" near the middle of subdivision (5).

The 1977 amendment, effective July 1, 1977, added the second sentences of subdivisions (10) and (11).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (5), (10) and (11) are set out.

Applied in Pritchett v. Clapp, 288 N.C. 329, 218 S.E.2d 406 (1975).

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

(6) Employees of a sending agency participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 shall remain members entitled to all benefits of the system provided that the requirements of Article 10 of Chapter 126 are met; provided

further, that a member may retain membership status while serving as an assigned employee or employee on leave under the provisions of Article 10 of Chapter 126 for purposes of receiving the death benefit regardless of whether he and his employer are contributing to his account during the exchange period except that no duplicate benefits shall be paid. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1; 1965, c. 781; 1967, c. 978, ss. 1, 2; 1969, c. 442, ss. 1-5, 7; c. 982; 1971, c. 325, ss. 6-8; c. 326, ss. 1, 2; 1973, c. 243, s. 1; 1977, c. 783, s. 2.)

Local Modification. — Guilford: 1977, c. 278.

Editor's Note. —

The 1977 amendment added subdivision (6). Session Laws 1977, c. 783, s. 5, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (6) are set out.

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

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

A participating employer may allow prior service credit to any of its employees on account of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such service prior to the establishment of the Teachers' and State Employees' Retirement System on July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum an amount calculated on the basis of compensation the employee earned when he first entered membership and the employee contribution rate at that time together with interest thereon from year of first membership to year of payment shall be one half of the calculated cost.

With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the armed forces of the United States if the person returned to the service of his employer within two years after having been honorably discharged, or becoming entitled to be discharged, released, or separated from such armed services; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if he submits satisfactory evidence of the military service claimed and the participating unit of which he is an employee agrees to grant credit for such military service prior to January 1, 1972.

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

(1) He returns to service, with the employer by whom he was employed when he entered military service, within a period of two years after he

is first eligible to be separated or released from such military service under other than dishonorable conditions.

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

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

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

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

(j) Notwithstanding any other provision of this Chapter, any member may, upon completion of 10 years of current membership service, purchase credit for service previously rendered to any state, territory or other governmental subdivision of the United States other than this State at the rate of one year of out-of-state service for each two years of service in this State with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this system. Credit will be allowed only if the member was not vested at time of separation and the service was not creditable after separation or withdrawal in any other public retirement system and only if no benefit is allowable in another public retirement system as a result of such service. Payment shall be permitted only on a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time and shall be equal to the full cost of providing credit for such service plus a fee to cover expense of handling which shall be determined by the Board of Trustees. These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of an individual is made. The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4; 1975, c. 205, s. 1; c. 485, ss. 1-3; 1977, c. 973.)

Editor's Note. —

The fourth 1973 amendment, effective July 1, 1974, added the last paragraph of subsection (a) and added subsections (i) and (j). The paragraph in brackets at the end of subsection (i) was enacted as s. 4 of the fourth 1973 amendatory act.

The first 1975 amendment, effective July 1, 1975, inserted "or the rules and regulations of the Law-Enforcement Officers' Benefit and Retirement Fund" in the first sentence of subsection (i).

The second 1975 amendment, effective July 1, 1975, deleted "provided that such agreement is entered into prior to July 1, 1975" at the end of subsections (a) and (j) and at the end of the first paragraph of subsection (i).

The 1977 amendment, effective July 1, 1977, added the present third paragraph of subsection (a).

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

§ 128-27. Benefits.

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1976. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1976, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one

quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b5) Service Retirement Allowances of Members Retiring on or after July 1, 1976. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1976, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

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

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

(2) Notwithstanding the foregoing provisions,

a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 128-27(d2);

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

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

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

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the Options set forth below. The election of Option two or Option three or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or his first retirement check has been cashed.

Option one. (a) In the Case of a Member Who Retires prior to July 1, 1965. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative.

(b) In the Case of a Member Who Retires on or after July 1, 1965. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one one-hundred-twentieth thereof for each month for which he has received a retirement allowance payment, shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Table II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit. A member who makes an election in accordance with this option shall be deemed to have made a further election of Option one above.

Option five. The member may elect:

(1) To receive a reduced retirement allowance under the conditions of Option two or Option three, as provided for above, with the modification

that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

(2) To receive a reduced retirement allowance during his life with provisions for some other benefit to be paid after his death in accordance with a plan submitted to and approved by the Board of Trustees.

Option six. A member may elect either Option two or Option three with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

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

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

(r) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(s) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 128-27(k) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(t) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter. (1939, c. 390,

s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128.)

Editor's Note. —

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

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

The first 1975 amendment, effective July 1, 1975, added Option six at the end of subsection (g), and added subsection (r).

The second 1975 amendment, effective July 1, 1975, added subsections (s) and (t).

The 1975, 2nd Sess., amendment, effective July 1, 1976, inserted "but prior to July 1, 1976" in the catchline and in the introductory paragraph to subsection (b4), added subsection (b5) and substituted "June 30, 1965" for "June 30, 1963" near the middle of subsection (t).

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

This Article specifically provides for both service retirement benefits and disability benefits which are not limited to disability resulting from injuries sustained in the performance of police duties. Pritchett v. Clapp, 288 N.C. 329, 218 S.E.2d 406 (1975).

For construction of act establishing city policemen's pension and disability fund, which incorporated this Article, see Pritchett v. Clapp, 288 N.C. 329, 218 S.E.2d 406 (1975).

§ 128-30. Method of financing.

(b) Annuity Savings Fund. — The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

(1) Prior to July 1, 1951, each participating employer shall cause to be deducted from the salary of each member of each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. On and after such date the rate so deducted shall be five per centum (5%) in the case of a Class A member or a Class C member, and four per centum (4%) in the case of a Class B member; provided, however, that with respect to any member who is covered under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of Article 2 of Chapter 135 of Volume 3B of the General Statutes, as amended, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his actual compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the Board of Trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the Board of Trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955, and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24, such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under Article 2 of Chapter 135 of Volume 3B of the General Statutes, as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required. In determining the amount earned by a member whose compensation is derived partly

or wholly from fees, such member shall submit a sworn statement to his employer monthly, or at least quarterly, each year as to the amount of fees received by such member as compensation during the period, and each month, or at least quarterly, such member shall pay to his employer the proper per centum of such compensation received from fees, which shall be considered as deductions by the employer as provided in subdivisions (1) and (2) of this subsection.

Notwithstanding the foregoing, effective July 1, 1965, with respect to the period of service commencing on July 1, 1965, and ending December 31, 1965, the rates of such deductions shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars ($4,800) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars ($4,800); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deduction shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars ($5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars ($5,600); and with respect to the period of service commencing July 1, 1967, and ending June 30, 1976, the rate of such deductions shall be five per centum (5%) of the portion of compensation not in excess of five thousand six hundred dollars ($5,600) and six per centum (6%) of the portion of compensation in excess of five thousand six hundred dollars ($5,600). Such rates shall apply uniformly to all members of the Retirement System, irrespective of class.

Notwithstanding the foregoing, effective July 1, 1976, with respect to compensation paid on and after July 1, 1976, the rate of such deductions shall be six per centum (6%) of the compensation received by any member. Such rates shall apply uniformly to all members of the Retirement System, irrespective of class.

(2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Article. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(3) The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this Article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(4) Subject to the approval of the Board of Trustees, any member who is granted by his employer a leave of absence for the sole purpose of acquiring knowledge, talents, or abilities which are, in the opinion of the employer, expected to increase the efficiency of the services of the member to his or her employer, may make monthly contributions to the

Retirement System on the basis of the salary or wage such member was receiving at the time such leave of absence was granted.

(1975, 2nd Sess., c. 983, ss. 129, 130.)

Editor's Note. —

The 1975, 2nd Sess., amendment, effective July 1, 1976, inserted "and ending June 30, 1976" near the end of the first sentence of the second paragraph of subdivision (b)(1) and added the third paragraph of that subdivision.

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

§ 128-36.1: Repealed by Session Laws 1977, c. 318.

Chapter 129.

Public Buildings and Grounds.

ARTICLE 6.

North Carolina Capital Planning Commission.

§§ 129-31 to 129-39: Repealed by Session Laws 1975, c. 879, s. 12, effective July 1, 1975.

Cross Reference. — For present provisions as to the North Carolina Capital Planning Commission, see §§ 143B-373, 143B-374.

Editor's Note. — Repealed § 129-31 was rewritten by Session Laws 1975, c. 602, s. 1. Repealed § 129-33 was amended by Session Laws 1975, c. 602, s. 2.

ARTICLE 7.

North Carolina Capital Building Authority.

§ 129-40. Creation of North Carolina Capital Building Authority. — There is hereby created the North Carolina Capital Building Authority which shall consist of the following: a member of the Senate to be appointed by the Lieutenant Governor; a member of the House of Representatives to be appointed by the Speaker of the House; the Attorney General; the State Treasurer; the Secretary of Administration who shall serve as chairman; and two members to be appointed by the Governor of North Carolina. The Governor shall serve as ex officio member. The vice-chairman shall be elected at the first meeting of the Authority. The Secretary of Administration may designate a member of his Department to serve as secretary to the Authority. All appointed members shall serve for a period of two years or until their successor has been named. (1967, c. 994, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of the Department of Administration" in two places.

§ 129-42. General powers and duties of Authority.

Planning and Construction of Art Museum. — The powers of the North Carolina Capital Building Authority (now the Department of Administration) under Chapter 129, Article 7, do not extend to the planning for and construction of the art museum. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 129-42.1. Agencies and institutions. — The North Carolina Capital Building Authority shall exercise those powers and duties set forth in G.S. 129-42 for the following agencies and institutions of the State of North Carolina and any other State agency or institution which may come under this Article by choice and upon notification to the Authority in writing: the North Carolina Department of Correction, Department of Human Resources, the North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf, the Governor Morehead School, the North Carolina Department of Motor Vehicles, the North Carolina sanatorium system including Western North Carolina Sanatorium, North Carolina Sanatorium at McCain, the Gravely Sanatorium, and the Eastern North Carolina Sanatorium, and all State agencies in the City of Raleigh and its environs with the exception of North Carolina State University. (1969, c. 112, s. 2; 1977, c. 750.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, inserted "Department of Human Resources" near the middle of the section and deleted "and Dorothea Dix Hospital" from the end of the section.

Art Museum Building Commission. — Since the Art Museum Building Commission proposes to construct a museum at the present site of the Polk Prison, which is within the environs of the City of Raleigh, the Commission is among the State agencies included within this section. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 129-42.2. Selection of architects or engineers. — State agencies and institutions in the selection of architects or engineers shall select not less than three persons or firms for each project to be designed for that institution. This selection of not less than three firms or individuals shall be forwarded to the Secretary of Administration, and the final selection shall be made from this group by the North Carolina Capital Building Authority. (1969, c. 1157; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director of the Department" in the second sentence.

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 129-44. Employees. — The Secretary of Administration shall employ as directed by this Authority all persons as may be necessary to assist this Authority in the execution of its duties. (1967, c. 994, s. 5; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director of the Department" near the beginning of the section.

ARTICLE 8.

State Construction Finance Authority.

§§ 129-50 to 129-70: Repealed by Session Laws 1975, c. 879, s. 46, effective July 1, 1975.

Cross Reference. — As to transfer of functions of the State Construction Finance Authority to the Department of Administration, see § 143B-368.

Chapter 130.

Public Health.

ARTICLE 1.

General Provisions.

§ 130-3. Definitions, as used in this Chapter.

(j) "Unit of local government" means a county, city, consolidated city-county, sanitary district, or other local political subdivision, authority or agency of local government. (1957, c. 1357, s. 1; 1963, c. 492, ss. 5, 6; 1967, c. 343, s. 2; c. 1257, s. 1; 1973, c. 476, s. 128; 1975, c. 751, s. 1.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, added subsection (j). As the rest of the section was not changed by the amendment, only subsection (j) is set out.

ARTICLE 2.

Administration of Public Health Law.

§ 130-9. Powers and duties of the Department of Human Resources and Commission for Health Services.

(c) The Secretary of Human Resources is authorized to establish and appoint as many special advisory committees as may be deemed necessary to advise and confer with the Department of Human Resources concerning the public health. Members of any special advisory committee shall serve without compensation but may be allowed actual and necessary travel and subsistence expenses when in attendance at meetings away from their places of residence.

(e) Nursing Homes. —

(1) The Commission for Health Services shall establish standards, adopt rules and regulations for the operation, inspection, and licensing of nursing homes as the same are hereinafter defined. Provided that the standards, rules and regulations adopted pursuant to this subsection shall provide that neither the Commission for Health Services nor the Department of Human Resources may give notice to the operator of a nursing home prior to inspection of the nursing home. The inspection of a facility for initial licensure shall be exempt from the requirement for no prior notice. All subsequent inspections must comply with the provisions of this subdivision.

(1a) The Department of Human Resources shall inspect and license nursing homes as the same are hereinafter defined utilizing the standards, rules and regulations provided for in G.S. 130-9(e)(1).

(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. Any person acting under the authority of the Commission for Health Services or the Department of Human Resources who gives advance notice to an operator of a nursing home of the date or time that the nursing home is to be inspected shall be guilty of a misdemeanor, and upon conviction thereof, shall be liable for a fine of not more than five hundred dollars ($500.00) or imprisonment for a period not to exceed 30 days, or both.

(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 subsection, and a home for the aged and infirm, as defined in subdivision (4) of this subsection, 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 the Commission for Health Services and be licensed by the Department of Human Resources; 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 the Commission for Health Services and the license issued by the Department of Human Resources. The Commission for Health Services shall consult with the Commission for Social Services regarding the standards for the boarding home area of the homes licensed by the Department of Human Resources 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 Department of Human Resources, 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.

(g) The Commission for Health Services upon consultation with a public health standards advisory committee to be composed of three local health directors, three local board of health chairmen, and three county commissioners (which commissioners shall be chosen from a list of five persons recommended by the North Carolina Association of County Commissioners), all to be appointed by the Secretary of Human Resources, shall have power, in the best interests of the public health, to establish reasonable standards governing the nature and scope of public health services rendered by local health departments. The Department may provide financial support to units complying with these standards. (1957, c. 1357, s. 1; 1961, c. 51, s. 3; 1963, c. 859; 1971, c. 539, s. 2; 1973, c. 110; c. 476, s. 128; 1975, cc. 83, 281; 1977, c. 656, ss. 1, 2.)

Editor's Note. —

The 1975 amendment substituted "The Commission for Health Services" for "The Department of Human Resources" at the beginning of subsection (g).

The second 1975 amendment substituted "Department of Human Resources" for "Commission for Health Services" in the first sentence of subsection (c).

The 1977 amendment, effective July 1, 1977, in subsection (e), added the second through fourth sentences of subdivision (1) and added the second sentence of subdivision (3).

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

Amendment Effective March 1, 1979. — Session Laws 1977, c. 897, s. 2, effective March 1, 1979, will add to subsection (e) subdivision (7), which reads as follows:

"(7) Community Advisory Committee. —

a. In order for a nursing home and home for the aged and infirm to be licensed under this subsection, the home shall be served by a community advisory committee which shall work with the home for the best interests of the persons residing in the home. Each committee shall consist of five persons. Three shall be appointed by the board of county commissioners of the county in which the home is located, one of whom shall be designated chairman; and two shall be appointed by the home. Each member appointed shall be a resident of the county in which the home is located. No person or immediate family member of a person with a financial interest in a home, or employee or immediate family member of an employee of a home, or immediate family member of a patient in a home may be a member of a committee. The members of the community advisory committee shall serve without compensation. The names of the committee members shall be filed with the Division of Aging, which shall supply a copy to the Division of Facilities Services.

b. The duties of the community advisory committee shall be to:

1. Visit each home it serves at least quarterly, but as often as it deems necessary to carry out its duties;
2. Appraise itself of the general conditions under which the persons are residing in the homes; and
3. Work for the best interests of the persons in the homes. This may include representing persons who have grievances to the home and facilitating the resolution of grievances. Whenever possible, the committee shall attempt to facilitate the resolution of grievances at the local level.

The community advisory committee may, at any time it deems necessary, communicate, through its chairman, with the Department of Human Resources or any other agency in relation to the interests of any patient. The names of all complaining persons shall remain confidential, unless written permission is given for disclosure.

c. Each home shall cooperate with its community advisory committee as it carries out the aforementioned duties. Any member of a community advisory committee

shall have the right to enter into any facility he serves at any reasonable hour in order to carry out the aforementioned duties."

Session Laws 1977, c. 897, s. 3, provides: "Nothing in this act shall be construed to interfere with the practice of medicine or the physician-patient relationship."

§ 130-9.1. Residencies in public health. — There shall be established within the North Carolina Department of Human Resources a residency program designed to attract physicians and dentists into the field of public health and to train them in the specialty of public health practice. The program shall include practical experience in public health principles and practices, such experience to be gained through exposure to specific work situations in the Department of Human Resources and local health departments in the State. (1975, c. 945, s. 1.)

Editor's Note. — Session Laws 1975, c. 945, s. 3, makes the act effective July 1, 1975.

§ 130-9.2. Coordinated Human Tissue Donation Program — legislative findings and purpose; program established. — (a) The General Assembly of North Carolina finds that there is an increasing need for human tissues for transplantation purposes; that there is a continuing need for human tissues, including entire human cadavers, for the purposes of medical education and research; and that these needs are not being sufficiently filled at the present because of, among other reasons, a shortage of human tissue donors. The General Assembly establishes this program to facilitate the acquisition and distribution of human tissues, including human cadavers, so as to lead to bettering the public health of the people of this State.

(b) The Department of Human Resources shall establish a coordinated program among departments and agencies of the State and all groups, both public and private, involved in the acquisition and distribution of human tissue to:

(1) Encourage the publicizing of the need for human tissue donations and of the methods by which these donations are made;

(2) Make itself aware of the existing programs of human tissue transplantation and of medical research and education which employ human tissue, including whole cadavers, and funnel information of useful developments to groups and individuals within this State which such information might benefit;

(3) Study the problems surrounding the acquisition and distribution of human tissue and cadavers in this State and make suggestions as to their solution;

(4) Disseminate information to health and other professionals concerning the techniques of human tissue retrieval and transplantation, the legalities involved in making anatomical gifts, and the legal responsibilities of individuals under Article 14 of Chapter 90 of the General Statutes which deals with cadavers for medical schools; and

(5) Arrange for the quick and precise transportation of donated human tissue in emergency transplant situations.

(c) All departments and agencies of the State and county and municipal law-enforcement agencies shall cooperate, insofar as possible and not inconsistent with existing law, in the coordinated program instituted by the Department under the authority of this section. (1975, c. 974, s. 1.)

Editor's Note. — Article 14 of Chapter 90, referred to in this section, was repealed by Session Laws 1975, c. 694, s. 1. See now § 90-216.6.

§ 130-9.3. Powers and duties relative to nutrition programs. — The Department of Human Resources is authorized and directed to:

(1) Initiate communications among all State departments, agencies, and universities conducting nutrition programs in order to develop coordinated planning for optimum nutrition for the people of North Carolina.

(2) Stimulate wider citizen concern for improved nutrition for the people of North Carolina through: (i) involvement of civic, professional, and religious organizations, (ii) extensive use of mass media, and (iii) all other appropriate means necessary to accomplish this purpose.

(3) Initiate, through appropriate agencies, programs to provide good nutrition for all children.

(4) Promote the establishment of positions and training for nutrition workers in local health programs.

(5) Encourage and assist in the incorporation of the science of nutrition into the curriculum for candidates for degrees in education, health professions, and social work.

(6) Obtain support and financial assistance from the public and private sectors to upgrade the nutritional status of the people of North Carolina. (Resolution 112, 1973, p. 1413.)

Cross Reference. — For provisions relating to hospitals for the mentally disordered, see Chapter 122.

Editor's Note. — Prior to 1977, this section was not codified.

§ 130-9.4. Counties to recover indirect costs on certain federal public health or mental health grants. — (a) The Department of Human Resources shall include in its cost allocation plan applicable to public health or mental health grants from the federal government to the State or any of its agencies, prepared pursuant to Federal Management Circular 74-4 or any successor thereto, indirect costs incurred by counties acting as subgrantees under such grants or otherwise providing services to the Department with regard to such grants to the full extent permitted by the Management Circular. The Department shall allow such counties to claim and recover their indirect costs on such grants to the full extent permitted by the Management Circular.

(b) This section shall not apply to those federal public health or mental health grants which are formula grants to the State or which are otherwise limited as to the maximum amounts receivable on a statewide basis. (1977, c. 876, ss. 1, 2.)

Editor's Note. — Session Laws 1977, c. 876, s. 3, makes this section effective July 1, 1977.

§ 130-10. Employees of Department of Human Resources. — In order that the rules, regulations and standards of the Commission for Health Services may be enforced, the employees of the Department of Human Resources shall perform such functions as shall be delegated to them by the Department of Human Resources or by law. The Department of Human Resources may employ such persons as are deemed necessary by the Department for the purpose of carrying out the provisions of this Chapter and the public health programs established thereunder. All such employees must meet the qualifications and conform to the provisions of Chapter 126 of the General Statutes of North Carolina. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1975, c. 271.)

Editor's Note. —

The 1975 amendment substituted "standards" for "directives" in the first sentence. The amendatory act referred to line one of this section. In fact, the word "directives" appears in line two of this section in the Replacement Volume.

ARTICLE 3.

Local Health Departments.

§ 130-13. Provision of public health services.

(c) The county board of health shall include: one licensed physician, one licensed dentist, one licensed pharmacist, one county commissioner, and five persons appointed from the general public. County commissioners' terms of office as members of county boards of health shall be concurrent with their terms of office as county commissioners. When the county commissioner member of the board of health ceases to be a county commissioner for any reason, his appointment as a member of the board of health shall also cease, and the board of county commissioners, during their next meeting, shall appoint another commissioner to the board of health. In the event there is not a licensed physician, dentist, or pharmacist in the county, or if no physician, dentist, or pharmacist therein will serve on the board, then an additional member from the general public shall be appointed; but if a licensed physician, dentist or pharmacist later becomes available for appointment, he may be appointed to the board in place of such member from the general public. All vacancies in the county board of health occurring from any cause shall be filled by appointment of the county board of commissioners, and the person appointed shall serve for the unexpired portion of the term.

(1973, c. 1151; 1975, c. 272.)

Editor's Note. —

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

The 1975 amendment added the present second and third sentences of subsection (c).

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

Subsection (e), as rewritten by Session Laws 1973, Chapter 137, is not retroactive. Opinion of Attorney General to Mr. Clifton L. Moore, Jr., 44 N.C.A.G. 225 (1975).

§ 130-14. District health departments. — (a) Under rules and regulations established by the Commission for Health Services, district health departments including more than one county may be formed in lieu of county health departments upon agreement of the boards of county commissioners and local boards of health having jurisdiction over each of the counties involved. A county may, in accordance with the rules and regulations of the Commission for Health Services, join a district health department upon agreement of the board of commissioners of the county and the district board of health. A district health department shall be a public authority as defined in G.S. 159-7(b)(10).

(b) The Department of Human Resources may request the health department of a county to become part of a district health department composed of several counties, if in the opinion of the Department the public interest and the delivery of public health services to all the people of the new district would be enhanced thereby.

(c) The policy-making body of a district health department shall be a district board of health composed of 15 members. The board of county commissioners of each county in the district shall appoint one county commissioner to the district board of health. The county commissioner members shall appoint the other members of the board, including at least one licensed physician, one licensed dentist, and one licensed pharmacist, so as to provide equitable

district-wide representation. The composition of the board shall reasonably reflect the population makeup of the entire district. The members, except for the county commissioner members, shall serve terms of three years; provided, however, that two of the original members shall serve terms of one year, two of the original members shall serve terms of two years, and the remaining original members shall serve terms of three years. No member shall serve more than three consecutive three-year terms on the board to which he is appointed. County commissioners' terms of office as members of district boards of health shall be concurrent with their terms of office as county commissioners. When a county commissioner member of the board of health ceases to be a county commissioner for any reason, his appointment as a member of the board of health shall also cease, and the board of county commissioners of the county from which he was appointed, during their next meeting, shall appoint another commissioner to the board of health.

(d) The district board of health shall elect its own chairman annually. The district health director shall act as secretary to the board. A majority of the members shall constitute a quorum.

(e) Whenever a county shall join or withdraw from an existing district health department, the board of the district health department shall be dissolved and a new board shall be appointed as provided in subsection (c) above.

(f) The terms of all members of district boards of health holding office on April 9, 1973, shall expire on the same date as they would have had the 1973 Session Laws, Chapter 143, not been passed. Upon expiration of these terms their successors shall be appointed to terms of three years.

(g) Notwithstanding any provision of G.S. 130-14.1, no district health department shall be dissolved without prior written notification to the Department of Human Resources.

(h) No funds otherwise available for any health department of a county shall be withheld or diminished because of failure or refusal of such county health department to join or remain in a district health department. (1957, c. 1357, s. 1; 1969, c. 719, s. 2; 1971, c. 175, s. 2; 1973, c. 143, ss. 1-4; c. 476, s. 128; 1975, c. 396, s. 1.)

Editor's Note. —

The 1975 amendment added the second and third sentences of subsection (a), substituted "Department" for "board" preceding "the public interest" near the end of subsection (b), rewrote former subsections (c) and (d) as present subsection (c), redesignated former subsections (e) through (i) as present subsections (d) through (h), rewrote present subsections (e) and (f), and deleted "established under G.S. 130-14(b)" following "department" in present subsection (g).

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

Any budgetary surplus available to a district health department at the time of complete dissolution of the district health department shall be distributed to those counties comprising the district on the same pro rata basis that such counties appropriated and contributed funds to the district health department budget. Distribution to the counties shall be determined on the basis of an audit of the district health department financial records. The district board of health shall select a certified public accountant or an accountant who is subsequently certified by the Local Government Commission to conduct the audit. The audit shall be performed in accordance with G.S. 159-34. The same method of distribution of funds described above shall apply when one or more counties of a district health department withdraw from a district.

All ordinances and regulations adopted by a district board of health shall become void upon dissolution. Also, any county or counties withdrawing from a district health department may retain any ordinances adopted by the original district board of health, such retention of ordinances or regulations being contingent upon the adoption of the same ordinances and regulations by the new county board of health. (1971, c. 858; 1975, c. 396, s. 2; c. 403.)

Editor's Note. — The first 1975 amendment deleted, at the end of the first sentence of the last paragraph, "except that if two or more counties of the original district continue to operate as a district health department, those ordinances and regulations adopted by the original district board of health shall continue in effect."

The second 1975 amendment deleted "by an independent public accounting firm as selected by the district board of health" at the end of the second sentence of the second paragraph and added the third and fourth sentences of the second paragraph.

§ 130-17. Powers and duties of local boards; expenditures.

(b) The local boards of health shall make such rules and regulations, not inconsistent with law, as are necessary to protect and advance the public health. Subject to the provisions of G.S. 130-160, where such rules and regulations deal with subject matter also covered by rules and regulations of the Commission for Health Services, and there is an emergency, or peculiar local condition or circumstance, requiring such action in the interest of public health, the rules and regulations of the local boards may be more stringent, but not less stringent, than those of the Commission. In other instances where there is a conflict between the rules and regulations of the Commission and the local boards, the rules and regulations of the Commission shall prevail. All rules and regulations heretofore adopted by a local board of health shall remain in full force and effect until repealed by said local board of health or superseded by rules and regulations duly adopted by said local board of health.

(1977, c. 857, s. 2.)

Editor's Note. —

The 1977 amendment, in the second sentence of subsection (b), added "Subject to the provisions of G.S. 130-160" to the beginning and deleted "a" preceding "peculiar local condition or circumstance."

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

§ 130-22.1: Repealed by Session Laws 1975, c. 244.

ARTICLE 7.

Vital Statistics.

§ 130-36. State Registrar. — The Secretary of Human Resources shall designate a subordinate officer or employee of this Department as the State Registrar of Vital Statistics who shall exercise all the authority conferred by this Article. (1913, c. 109, s. 2; C. S., s. 7088; 1955, c. 951, s. 5; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1977, c. 163, s. 1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977 rewrote this section.

§ 130-42. Notification of death. — The funeral director or person acting as such who first assumes custody of a dead body or fetus shall submit a notification of death on a form prescribed by the State Registrar to the local registrar of the registration district in which death occurred, within 24 hours of taking custody of the body or fetus. Such notification of death shall identify the attending physician responsible for medical certification, except that for deaths under the jurisdiction of the medical examiner, the notification shall identify the medical examiner and certify that he has released the body to the funeral director for final disposition. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C. S., s. 7092; 1955, c. 951, s. 9; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 873, s. 1.)

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

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

(b) No cremation of a body shall be carried out unless an authorization-for-cremation form is signed by the county medical examiner certifying that he has made inquiry into the cause and manner of death and is of the opinion that no further examination of the same is necessary. Such form shall be furnished by the State Registrar of Vital Statistics. This provision does not apply to deaths occurring less than 24 hours after birth unless the death falls within the circumstances described in G.S. 130-198.

(c) A permit for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus except as authorized by regulation or otherwise provided by law. Such permit shall be issued by the local registrar to a licensed funeral director, embalmer, or other person acting as such, upon proper application.

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

(e) The local registrar shall issue a burial-transit permit for the removal of a dead body or fetus from this State provided that the requirements of G.S. 130-42 are met, and that the death is not under the jurisdiction of the medical examiner. (1973, c. 873, s. 2; 1977, c. 163, s. 2.)

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

The 1977 amendment, effective July 1, 1977, substituted "State Registrar of Vital Statistics" for "office of the Secretary of Human Resources" at the end of the second sentence of subsection (b).

Pursuant to Session Laws 1973, c. 476, s. 128, effective July 1, 1973, "Secretary of Human Resources" was substituted for "Chief Medical Examiner" in subsection (b) of this section as enacted by Session Laws 1973, c. 873, s. 2.

§ 130-43. Fetal death registration.

(c) When a fetal death is attended by a midwife, the midwife shall sign as the attendant but shall not sign the medical certificate of fetal death; such cases, and fetal deaths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance as provided for in G.S. 130-46. (1913, c. 109, s. 6; C. S., s. 7093; 1933, c. 9, s. 2; 1951, c. 1091, s. 1; 1955, c. 951, s. 10; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 873, s. 3.)

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

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

For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

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

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

§ 130-46. Death registration. — (a) A death certificate for each death which occurs in this State shall be filed with the local registrar of the district in which the death occurred within five days after such death. If the place of death is unknown, a death certificate shall be filed in the registration district in which a dead body is found within five days after such occurrence. If death occurs in a moving conveyance, a death certificate shall be filed in the registration district in which the dead body was first removed from such conveyance.

(b) The funeral director or person acting as such who first assumes custody of a dead body shall file the death certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available. He shall obtain the medical certification of cause of death from the person responsible therefor. He shall then state the facts required relative to the date and place of burial, over his signature and over the signature of the embalmer, if applicable. He shall present the completed certificate to the local registrar or his representative.

(c) The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death, provided that the death does not fall within the circumstances described in G.S. 130-198. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient, and any certificate containing any such indefinite or unsatisfactory terms, as defined by the State Registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. In deaths in hospitals or institutions, or of nonresidents, the physician shall supply the information required above, if he is able to do so, and may state where, in his opinion, the disease was contracted.

(d) It shall be the duty of the physician or medical examiner making the medical certification as to the cause of death to complete the medical certification no more than five days after death. The said physician or medical examiner may, in appropriate cases, designate the cause of death as unknown pending an autopsy or upon some other reasonable cause for delay, but shall send the supplementary information to the local registrar as soon as it is obtained.

(e) In the case of death or fetal death without medical attendance, it shall be the duty of the funeral director, or person acting as such, and any other person having knowledge of such death, to notify the local medical examiner of such death. No disposition or removal of such body shall be carried out without the permission of the medical examiner. If there is no local medical examiner, the Secretary of Human Resources shall be notified. (1913, c. 109, ss. 7, 9; C. S., ss. 7094, 7096; 1949, c. 161, s. 1; 1955, c. 951, ss. 11, 12; 1957, c. 1357, s. 1; 1963, c. 492, ss. 1, 2, 4; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; c. 873, s. 5.)

Editor's Note. — Session Laws 1973, c. 873, s. 5, effective Jan. 1, 1975, substituted "five days" for "seventy-two hours" in the first and second sentences of subsection (a), deleted "and prior to final disposition of the body or removal from the State" at the end of the first sentence of subsection (a), deleted "in order to obtain a burial-transit permit" at the end of the present last sentence of subsection (b) and deleted the former last sentence of subsection (b), relating to disposition of the burial-transit permit. In subsection (c) the amendment deleted "or injury" following "disease" near the beginning of the first sentence, added at the end of that sentence "provided that the death does not fall within the circumstances described in G.S. 130-198" and deleted "for the issuance of a burial-transit permit" following "sufficient" in the second sentence. The amendment also substituted "no more than five days after death" for "prior to interment but in no event more than seventy-two hours after death" at the end of the first sentence of subsection (d) and added subsection (e).

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

For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

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

§ 130-48. Registration of divorces and annulments. — (a) For each divorce and annulment of marriage granted by any court of jurisdiction in this State, a report shall be prepared and filed by the clerk of court with the State Registrar. The information necessary to prepare the report shall be furnished to the clerk of court by the parties or their legal representatives on forms prescribed and furnished by the State Registrar. On or before the fifteenth day of each month, the clerk of court shall forward to the State Registrar the report of each divorce and annulment granted during the preceding calendar month. Upon request, the Department of Human Resources shall furnish a true copy of any such record, which may be, but is not required to be, photographic, upon the payment to the Department of a fee not to exceed three dollars ($3.00), 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 by the Department pursuant to this section shall be turned over to the State Treasurer and paid into the general fund of the State. The Department of Human Resources is hereby authorized and empowered to do all things necessary to implement and carry out the provisions of this section.

(1977, c. 1110, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, in the fourth sentence of subsection (a), increased the maximum fee for furnishing a true copy of the report of a divorce or annulment from $2.00 to $3.00.

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

§ 130-49. Registration of marriage certificates; duty of registers of deeds; forms; furnishing copies; copies as evidence. — On or before the fifteenth day of each month, the registers of deeds of the several counties of this State shall transmit to the Department of Human Resources, on forms prescribed and furnished by it, a record of each and every marriage ceremony performed in his county during the preceding calendar month, a record of which has been filed in his office as required by applicable law. The form prescribed by the State Registrar shall contain and set forth in substance the forms and information required by G.S. 51-16 as amended, as a minimum requirement, and shall be the official form of a marriage license, certificate of marriage, and application for marriage license, issued by the register of deeds. The form so prescribed shall contain additional information in order to conform to the minimum requirements of the national agency in charge of vital statistics. Each form signed and issued by the register of deeds, assistant register of deeds, or deputy register of deeds shall constitute an original or duplicate original. Upon request, the Department of Human Resources shall furnish a true copy of any such record, which may be, but is not required to be, photographic, upon the payment to the Department of a fee of three dollars ($3.00), 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 Department of Human Resources is authorized to do all things necessary to implement and carry out the provisions of this section. (1961, c. 862; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1977, c. 1110, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, in the fifth sentence, increased the fee for a true copy of the record of a marriage ceremony from $2.00 to $3.00.

§ 130-50. Birth registration.

Editor's Note. — For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

§ 130-54. Contents of birth certificate.

Consent Required for Change of Illegitimate Child's Name. — Under this section, a third person having care of an illegitimate child can petition to have the name of the child changed with only the consent of the child's natural mother. Where the natural mother petitions to change the name of her illegitimate child, the consent of no other person is logically required, as no other person has any "rights" inherent in that child's name. In re Dunston, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

§ 130-58.1: Repealed by Session Laws 1977, c. 127.

§ 130-59. State Registrar to supply blanks; to perfect and preserve birth and death certificates.

(c) The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous index of all births and deaths registered. Adequate fireproof space in one of the State buildings for filing the birth and

death records made and returned under this Article shall be provided by the Department of Administration. No persons other than those authorized by the State Registrar shall have access to any original birth and death records. (1913, c. 109, s. 17; C. S., s. 7105; 1941, c. 297, s. 2; 1949, c. 160, s. 3; 1955, c. 951, s. 17; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1969, c. 1031, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Administration" for "General Services Division" in the second sentence of subsection (c).

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

§ 130-60. Amendment of birth and death certificate. — (a) No certificate of birth or death, after its acceptance for registration by the State Registrar, and no other record made in pursuance of this Article, shall be altered or changed in any respect otherwise than by amendment requests properly dated, signed and witnessed: Provided, that the State Registrar may promulgate rules and regulations governing the type and amount of proof of the correctness of the change or amendment which must accompany the request for a change or amendment in the certificate of birth or death, or other record made in pursuance of this Article: Provided, further, that a new certificate of birth shall be made by the State Registrar whenever:

(1) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of such person;

(2) When notification is received by the State Registrar from the clerk of a court of competent jurisdiction of a judgment, order, or decree disclosing different or additional information relating to the parentage of a person;

(3) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order, or decree disclosing different or additional information relating to the parentage of a person;

(4) A written request from an individual is received by the State Registrar to change the sex on his or her birth record because of sex reassignment surgery, provided that the request is accompanied by a notarized statement from a physician licensed to practice medicine stating that he performed the sex reassignment surgery or that, based on his physical examination of the individual, he or she has undergone sex reassignment surgery.

(b) For the amendment of any certificate of birth or death after its acceptance for filing, or for the making of a new certificate of birth under this Article, the State Registrar shall be entitled to a fee not to exceed seven dollars and fifty cents ($7.50) to be paid by the applicant. Such fees shall be deposited and accounted for in the same manner as all other fees provided for in this Article. (1975, c. 556; 1977, c. 1110, s. 4.)

Editor's Note. — The 1975 amendment added subdivision (4) of subsection (a).

The 1977 amendment, effective July 1, 1977, in subsection (b), increased the maximum fee for the amendment of any certificate of birth or death after its acceptance for filing, or for making a new certificate of birth, from $5.00 to $7.50.

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

§ 130-65. Pay of local registrars.

Local Modification. — Moore: 1975, c. 422.

§ 130-66. Certified copies of records; fee.

(c) The State Registrar shall be entitled to a fee not to exceed three dollars ($3.00) for the making and certification of any record registered under the provisions of this Article, or for conducting a search of the files for such record when no copy is made.

The State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the Treasurer of the State of North Carolina for use by the Department of Human Resources for health purposes.

(1977, c. 1110, s. 1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, increased the maximum fee in subsection (c) from $2.00 to $3.00.

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

The purpose of this section, etc. —

In accord with original. See Spillman v. Forsyth Mem. Hosp., 30 N.C. App. 406, 227 S.E.2d 292 (1976).

Quoted in State v. Gray, 292 N.C. 270, 233 S.E.2d 905 (1977).

Cited in In re Arthur, 291 N.C. 640, 231 S.E.2d 614 (1977).

§ 130-69. Violations of Article; penalty. — (a) Grounds for Suspension or Revocation of Embalmer's or Funeral Director's License. — A violation of any of the provisions of this Article by any licensed embalmer or licensed funeral director shall constitute grounds for suspension or revocation of such license or licenses by the State Board of Embalmers and Funeral Directors.

(b) Misdemeanors. — Any person who, for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

(1) Shall remove the dead body of a human being, or permit the same to be done, without such authorization as is provided in this Article;

(2) Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record required by this Article;

(3) Willfully alter, otherwise than as provided by G.S. 130-60, or falsify any certificate or record required by this Article; or willfully 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 willfully make, create or use any altered, falsified, or changed record, reproduction, copy or document, for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown thereon;

(4) With the intention to deceive willfully uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(5) Willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by an unauthorized person or for an unauthorized purpose;

(6) Fail, neglect, or refuse to perform any act or duty as required by this Article or by the instructions of the State Registrar prepared under authority of this Article;

(7) Repealed by Session Laws 1975, c. 82;

shall, upon conviction thereof, be guilty of a general misdemeanor and punished in the discretion of the court.

(c) Felonies. — Any person who, for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall, for monetary consideration or other consideration of monetary value:

(1) Willfully alter, otherwise than as provided by G.S. 130-60 or by law, or falsify any certificate or record required by this Article or any birth certificate of another state; willfully alter or falsify 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 of any birth certificate of another state; willfully make or create any altered or falsified certificate or record required by this Article or any birth certificate of another state; willfully use or attempt to use any falsified certificate or record required by this Article or any birth certificate of another state or any falsified 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 of any birth certificate of another state for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown thereon;

(2) Willfully use or attempt to use with intent to deceive any certificate or record required by this Article or any birth certificate of another state knowing that such certificate or record was issued upon a record which is false in whole or in part or which pertains to another person; or

(3) Willfully and knowingly furnish a certificate or record required by this Article or any birth certificate of another state with the intention that it be used by an unauthorized person or for an unauthorized purpose;

shall upon conviction thereof be guilty of a felony and shall be punished by imprisonment in the State Prison for a term not exceeding five years or fine not exceeding five thousand dollars ($5,000), or both, in the discretion of the court. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S., s. 7112; 1955, c. 673; c. 951, s. 25; 1957, c. 1357, s. 1; 1963, c. 492, s. 7; 1969, c. 1031, s. 1; 1971, c. 444, s. 6; 1975, cc. 82, 468.)

Editor's Note. —

The first 1975 amendment repealed subdivision (7) of subsection (b), which formerly made it a misdemeanor to inter, cremate, remove from the State or dispose of a dead body without a burial-transit permit. The amendatory act, in repealing subdivision (7), did not refer to subsection (b), but that subsection was clearly intended.

The second 1975 amendment added subsection (c).

ARTICLE 8.

Infectious Diseases Generally.

§ 130-81. Physicians to report certain diseases.

Editor's Note. —

For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

United States Public Law 93-380 Is Inapplicable to Such Reporting by a College or University Physician. — See opinion of Attorney General to Mr. Rodney Hobbs, Division of Health Services, N.C. Department of Human Resources, 44 N.C.A.G. 163 (1974).

§ 130-84. Duty of disinfection.

Editor's Note. —
For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

ARTICLE 9.

Immunization of Children against Certain Communicable Diseases.

§ 130-87. Immunization required. — Every child residing in this State shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola), and rubella, and, in addition, shall be immunized against smallpox, upon a determination by the Commission for Health Services that such immunization is in the best interest of the public health. The Commission shall adopt rules and regulations setting forth the required immunizations, the child's age for administering each vaccine, and the adequately immunizing doses. Only those vaccine preparations may be used which meet the standards of the United States Food and Drug Administration or any agency succeeding to its responsibilities for licensing vaccines and are also approved for use by the Commission for Health Services. (1957, c. 1357, s. 1; 1971, c. 191; 1973, c. 476, s. 128; c. 632, s. 1; 1975, c. 84; 1977, c. 160.)

Editor's Note. —
The 1975 amendment substituted "Commission for Health Services" for "Department of Human Resources" and "Commission" for "Department" throughout the section.

The 1977 amendment, effective July 1, 1977, substituted "poliomyelitis, red measles (rubeola), and rubella" for "poliomyelitis, and red measles (rubeola)" in the first sentence.

ARTICLE 10.

Venereal Disease.

Part 1. Venereal Disease.

§ 130-95. Physicians and others to report cases or positive laboratory tests.

Editor's Note. —
For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

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

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

Part 2. Inflammation of the Eyes of the Newborn.

§ 130-107. Inflammation of eyes of newborn to be reported.

Editor's Note. — For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

§ 130-108. Eyes of newborn to be treated; records.

Editor's Note. —
For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

ARTICLE 11.

Tuberculosis.

Part 1. Prevention of Spread of Tuberculosis.

§ 130-114. Precautions necessary pending admission to the hospital. — (a) Whenever it has been determined that any person has tuberculosis in an active stage or in a communicable form, and such person is not immediately admitted as a patient in a State sanatorium for tuberculosis, county sanatorium for tuberculosis or in a private hospital or ward of a private hospital maintained for the treatment of tuberculosis, it shall be the duty of the local health director to instruct such person as to the precautions necessary to be taken to protect the members of such person's household or the community from becoming infected by tuberculosis communicated by such person, and it shall be the duty of such tuberculous person to conduct himself and to live in such a manner as not to expose members of his family or household, or any other person with whom he may be associated to danger of infection, and said health director shall investigate from time to time to make certain that his instructions are being carried out in a reasonable and acceptable manner. It shall be unlawful for any person to:

(1) Willfully fail and refuse to present himself to any private physician qualified in chest diseases, hospital, clinic, county sanatorium or State sanatorium for an examination for tuberculosis at such time and place as is fixed by the health director or at such time and place agreed upon between such suspected person and the health director,

(2) Willfully fail and refuse to present himself for admission as a patient to any State sanatorium, county sanatorium, provided such facilities are available, or private hospital or ward of a private hospital maintained and operated for the treatment of tuberculous persons when such action is found by the health director to be necessary for the prevention of spread of the disease, in accordance with the provisions of G.S. 130-113,

(3) Willfully fail or refuse to follow the instructions of the health director as to the precautions necessary to be taken to protect the members of his or her household or any member of the community or any other person with whom he or she may be associated from danger of infection by tuberculosis communicated by such person.

(b) If any person shall plead guilty to, or be convicted of, any of the violations set forth in subdivisions (2) and (3) of subsection (a), such person shall be imprisoned for a period of up to two years, under the supervision of the Department of Correction, in the special facilities to be operated by the Department of Correction adjacent to the McCain Hospital, McCain, North Carolina. However, the court may suspend the sentence if the violator consents to be hospitalized in a State or federal sanatorium or a general hospital and remains there until discharged by the medical director or controlling authority of the facility, provided that the violator has not been previously discharged from a hospital for disciplinary reasons while undergoing treatment for tuberculosis or has not previously discharged himself from such a facility against medical advice.

The Secretary of Correction, or his authorized agent, may discharge a person imprisoned for health care violation under this section at any time if he finds that the discharge is without danger to the life or health of others. He shall report each such discharge, together with a full statement of the reasons therefor, to the health director serving the territory from which the person came. Additionally, he may transfer any patient imprisoned under this section from the special facilities adjacent to the McCain Hospital to any State sanatorium or Veterans Administration Tuberculosis Hospital, with the consent of the receiving facility. The person transferred shall at all times remain under the custody and control of the Department of Correction.

(c) The provisions of this section apply to minors as well as adults. However, persons under 16 years of age, upon conviction of a violation of this section, shall not be imprisoned in the special facilities adjacent to McCain Hospital, but shall be placed in a State or federal sanatorium or a general hospital for treatment. (1943, c. 357; 1951, c. 448; 1955, c. 89; 1957, c. 1357, s. 1; 1967, c. 996, s. 13; 1973, c. 1262, s. 10; 1975, c. 518, ss. 2, 3.)

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

The 1975 amendment, effective July 1, 1975, designated the first paragraph as subsection (a), deleted the second, third and fourth paragraphs and added subsections (b) and (c).

Part 2. Tuberculous Prisoners.

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

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

ARTICLE 12.

Sanitary Districts.

§ 130-124. Procedure for incorporating district. — A sanitary district shall be incorporated as hereinafter set out. Either fifty-one percent (51%) or more of the resident freeholders within a proposed sanitary district, or fifty-one percent (51%) or more of the freeholders within a proposed sanitary district, whether residents therein or not, may petition the board of county commissioners of the county in which all or the largest portion of the land of the proposed district is located, setting forth the boundaries of the proposed sanitary district and the objects it is proposed to accomplish. Upon receipt of such petition the board of county commissioners, through its chairman, shall notify the Department of

Human Resources 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 Department of Human Resources 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 Secretary of Human Resources 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 Department of Human Resources. For purposes of a petition for incorporation of a proposed sanitary district filed by fifty-one percent (51%) or more of the freeholders of the proposed district, whether residents therein or not, the term "freeholders" shall mean persons holding a deed to a tract of land within the proposed district, and also shall mean persons who have entered into a contract to purchase a tract of land within the proposed sanitary district, are making payments pursuant to such contract, and will receive a deed upon completion of the contractual payments. It is the intent of this [1975] amendment that the contracting purchaser, rather than the contracting seller, shall be deemed to be the freeholder. (1927, c. 100, ss. 2-4; 1951, c. 178, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 1; 1965, c. 135; 1967, c. 24, s. 21; 1973, c. 476, s. 128; 1975, c. 536.)

Editor's Note. —
The 1975 amendment added the last two sentences.

§ 130-128. Corporate powers.

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

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

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

§ 130-129. Organization of board. — Upon election, a sanitary district board shall meet and elect one of its members as chairman, and another member as secretary. Each member of the board may receive a per diem compensation and other compensation as provided for members of State boards under G.S. 138-5 when actually engaged in the business of the district, payable from the funds of the district. The board may employ a clerk, stenographer, or such other

assistants as it may deem necessary and may fix the duties and compensation thereof.

A sanitary district board may at any time remove any of its employees and may fill any vacancies however arising. (1927, c. 100, s. 8; 1957, c. 1357, s. 1; 1967, c. 723; 1977, c. 183.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "and other compensation as provided for members of State boards under G.S. 138-5" for "of twelve dollars ($12.00)" in the second sentence.

§ 130-143. Engineers to provide plans and supervise work; bids. — The sanitary district board shall retain competent engineers to provide detail plans and specifications and to supervise the doing of the work undertaken by the district. As determined by the sanitary district board, such work or any portion thereof, may be done by the sanitary district board purchasing the material and letting a contract for the doing of the work or by letting a contract for furnishing all the material and the doing of the work.

All contracts for work performed for construction or repair, and for the purchase of materials and supplies by sanitary districts shall be in accordance with the provisions of Article 8, Chapter 143 of the General Statutes which are applicable to counties and municipal corporations.

All work done shall be in accordance with the plans and specifications prepared by the engineers in conformity with the plan adopted by the sanitary district board. (1927, c. 100, s. 19; 1957, c. 1357, s. 1; 1977, c. 544, s. 1.)

Editor's Note. — The 1977 amendment substituted the present second paragraph for the former second and third paragraphs, which read, respectively: "Any contract shall be let to the lowest responsible bidder submitting a sealed bid in response to a notice calling for such bid and published at least five times over a period of at least 15 days in a newspaper or newspapers having a general circulation within the county or counties in which the district is located" and "Any material to be purchased by the sanitary district board, the cost of which is in excess of one thousand dollars ($1,000), shall be purchased from the lowest responsible bidder in the same manner as above provided." Session Laws 1977, c. 544, s. 2, provides: "This act shall not apply to contracts advertised prior to the effective date of this act." The act was ratified June 13, 1977, and became effective on ratification.

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

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

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

§ 130-152. Further validation of creation of districts. — All actions prior to June 6, 1961, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the formation and creation, of sanitary districts in the State wheresoever situate, and the formation and creation, or the attempted formation and creation, of any and all such sanitary districts are hereby in all respects legalized, ratified, approved, validated and confirmed, and each and all such sanitary districts are hereby declared to be lawfully formed and created and to be in all respects legal and valid sanitary districts. (1953, c. 596, s. 1; 1957, c. 1357, s. 1; 1961, c. 667, s. 1.)

Editor's Note. — Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in

subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S. 130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

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

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

Editor's Note. — Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S. 130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

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

§ 130-152.2. Additional validation of extension of boundaries of districts. — All actions and proceedings prior to May 1, 1971, 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; 1975, c. 712, s. 1.)

Editor's Note. —

The 1975 amendment substituted "May 1, 1971" for "May 1, 1959" near the beginning of the section.

Session Laws 1975, c. 712, s. 2, provides: "This act shall become effective upon ratification and shall not affect pending litigation." The act was ratified June 23, 1975.

Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S. 130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

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

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

Editor's Note. — Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S. 130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

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

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

Editor's Note. — Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S. 130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

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

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

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

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

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

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, effective July 1, 1973, "Department of Human Resources" has been substituted for "State Board of Health" in the last paragraph of this section as enacted by Session Laws 1973, c. 951.

ARTICLE 13.

Water and Sewer Sanitation.

§ 130-158. Suppliers of water to comply with rules of Commission for Health Services. — In the interest of the public health, every person or unit of local government supplying water to the public for drinking and household purposes shall comply with the rules and regulations of the Commission for Health Services in the location, construction and operation of a water supply system. Any provisions in any charters heretofore granted to such persons or units of local government in conflict with the provisions of this Article are hereby repealed. (1899, c. 670, s. 1; 1903, c. 159, s. 1; Rev., s. 3058; 1911, c. 62, s. 24; C. S., s. 7116; 1957, c. 1357, s. 1; 1975, c. 751, s. 2.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, rewrote this section.

§ 130-159. Department of Human Resources to control and examine waters; Commission for Health Services to make rules. — The Department of Human Resources 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 Commission for Health Services shall make reasonable rules and regulations governing the location, construction, and operation of water supply systems. (1911, c. 62, s. 24; C. S., s. 7117; 1957, c. 1357, s. 1; 1959, c. 779, s. 9; 1973, c. 476, s. 128; 1975, c. 751, s. 3.)

Editor's Note. —

The 1975 amendment, effective Jan. 1, 1976, substituted "water supply systems" for "public water and sewer facilities" at the end of the second sentence and deleted the third sentence, which related to rules and regulations adopted by the Commission for Health Services dealing with the location, construction and operation of public sewerage facilities.

§ 130-160. Sanitary sewage disposal; rules. — (a) Any person owning or controlling any single- or multiple-family residence, place of business or place of public assembly shall provide a sanitary system of sewage disposal consisting of an approved privy, an approved septic tank system, or a connection to a public or community sewerage system. Any such sanitary sewage disposal system with 3000 gallons or less design capacity serving a single- or multiple-family residence, place of business, or place of public assembly, the effluent from which is not discharged to the surface waters, shall be approved under rules and regulations promulgated by the Commission for Health Services. All other such sanitary sewage disposal systems with more than 3000 gallons design capacity shall be approved under rules and regulations promulgated by the Board of Water and Air Resources pursuant to the applicable provisions of Article 21 of Chapter 143.

(b) Notwithstanding the provisions of subsection (a) of this section and the provisions of G.S. 130-17(b), any sanitary sewage disposal system subject to approval under rules and regulations of the Commission for Health Services shall be reviewed and approved under rules and regulations of a local board of health in the following circumstances:

(1) The local board of health, on its own motion, has requested the Commission for Health Services to review its proposed regulations concerning sanitary sewage disposal systems.

(2) The Commission for Health Services has found that the regulations of the local board of health concerning sanitary sewage disposal systems are substantially equivalent to the Commission's regulations, and are sufficient to safeguard the public health.

(c) The Commission for Health Services from time to time, upon its own motion or upon the request of a local board of health or upon the request of a citizen of an affected county, may review its findings under subsection (b) of this section. Subject to such review, the Commission's finding that local regulations meet the requirements of subsection (b) of this section shall be binding and conclusive.

(d) The relationship between State and local regulations concerning sanitary sewage disposal systems shall continue to be governed by G.S. 130-17(b) except in those cases where local regulations have been reviewed and approved pursuant to subsection (b) of this section. (1957, c. 1357, s. 1; 1973, c. 471, s. 1; c. 476, s. 128; c. 860; 1977, c. 857, s. 1.)

Editor's Note. —

The third 1973 amendment, in present subsection (a), substituted "single- or multiple-family" for "two-family" in the first sentence and inserted "single- or" in the second sentence.

The 1977 amendment designated the former provisions of this section as subsection (a) and added subsections (b), (c) and (d).

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

§ 130-161. Submission and approval of water supply system plans; Department to provide advice. — The Department of Human Resources shall advise all persons and units of local government locating, constructing, altering or operating or intending to locate, construct, alter, or operate a water supply system of the most appropriate source of water supply and the best practical method of assuring the purity thereof, having regard to the present and prospective needs and interests of other persons and units of local government which may be affected thereby. The Department shall also advise concerning accepted engineering practices in the location, construction, alteration, and operation of water supply systems.

All persons and units of local government constructing or altering a water supply system shall give prior notice thereof and submit plans, specifications, and other information therefor to the Department of Human Resources. The Commission for Health Services shall promulgate rules and regulations providing for the amount of prior notice required to be given and the nature and detail of the plans, specifications, and other information required to be submitted. The Commission shall take into consideration the complexity of the construction or alteration which may be involved and the resources of the Department to review the plans, specifications, and other information. The Department shall review the plans, specifications, and other information and notify the person or unit of local government of compliance or lack thereof with applicable law and rules and regulations of the Commission for Health Services.

No person or unit of local government shall construct or alter a water supply system until plans therefor have been approved by the Department of Human Resources. (1911, c. 62, s. 24; C. S., s. 7118; 1957, c. 1357, s. 1; 1959, c. 779, s. 9; 1967, c. 892, s. 3; 1973, c. 471, s. 2; c. 476, s. 128; 1975, c. 751, s. 4.)

Editor's Note. —

The 1975 amendment, effective Jan. 1, 1976, rewrote this section.

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

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

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

Editor's Note. — The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" in subsection (d). As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 130-165. Discharge of sewage or industrial waste. — No person or municipality shall flow or discharge sewage or industrial waste above the intake into any source from which a public drinking water supply is taken, unless said sewage or industrial waste shall have been passed through some system of purification approved by the Commission for Health Services and Environmental Management Commission; and the continued flow and discharge of such sewage may be enjoined. (1903, c. 159, s. 13; Rev., ss. 3051, 3858; 1911, c. 62, ss. 33, 34; C. S., s. 7125; 1957, c. 1357, s. 1; 1959, c. 779, s. 9; 1967, c. 892, s. 3; 1973, c. 476, s. 128; c. 1262, s. 23.)

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

ARTICLE 13A.

Sanitation of Agricultural Labor Camps.

§ 130-166.1. Definitions.

This Article Has Not Been Preempted by the Occupational Safety and Health Act of 1970 or Impliedly Repealed by the Occupational Safety and Health Act of North Carolina. — See opinion of Attorney General to Mr. Ben Eaton, Division of Health Services, Department of Human Resources, 43 N.C.A.G. 358 (1974).

ARTICLE 13B.

Solid Waste Management.

§ 130-166.16. Definitions. — The following definitions shall apply in the enforcement and interpretation of this Article:

(1a) "Natural resources" — all materials which have useful physical or chemical properties which exist, unused, in nature.

(1b) "Recycling" — the process by which recovered resources are transformed into new products in such a manner that the original products lose their identity.

(2a) "Resource recovery" — the process of obtaining material or energy resources from solid waste.

(6a) "Solid waste management" — the purposeful, systematic control of the generation, storage, collection, transport, separation, processing, recycling, recovery and disposal of solid waste. (1969, c. 899; 1975, c. 311, s. 2.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, added the definitions of "natural resources," "recycling," "resource recovery" and "solid waste management."

Session Laws 1975, c. 311, s. 1, changed the heading of Article 13B from "Solid Waste Disposal" to "Solid Waste Management."

Only the introductory language and the subdivisions added by the amendment are set out.

§ 130-166.17. Solid waste unit in Department of Human Resources. — For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of our natural resources, the Department of Human Resources shall maintain an appropriate administrative unit to promote sanitary processing, treatment, disposal, and overall management of solid waste and the greatest possible recycling and recovery of the resources of the State, and the Department shall employ and retain such qualified personnel as may be necessary. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 3.)

Editor's Note. —

The 1975 amendment, effective Sept. 1, 1975, substituted "creation of nuisances and the depletion of our natural resources" for "creating of nuisances" and "processing, treatment, disposal and overall management of solid waste and the greatest possible recycling and recovery of the resources of the State" for "disposal of solid waste."

§ 130-166.18. Solid waste management program. — The Department of Human Resources is authorized and directed to engage in research, conduct investigations and surveys, make inspections, and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste throughout the State; and

(2) Advise, consult, cooperate, and contract with other agencies and units of State and local governments, the federal government, and industries and individuals in the formulation and carrying out of a solid waste management program.

(3) Develop and promulgate standards for qualification as a "recycling or resource recovering facility" or as "recycling or resource recovering equipment" for the purpose of special tax classifications or treatments, and to certify as qualifying those applicants which meet the established standards. The standards shall be so developed as to qualify only those facilities and equipment exclusively used in the actual resource recovering or recycling process and shall exclude any incidental or supportive facilities and equipment.

(4) Delegate authority and responsibility to local governments, including counties, to perform all or any portion of a solid waste management program within the jurisdictional area of the local government; provided, that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

The Commission shall have authority to provide standards for the establishment, location, operation, maintenance, use and discontinuance of solid waste management sites and facilities. Such standards shall be designed to accomplish the maintenance of safe and sanitary conditions in and around solid waste management sites and facilities, and shall be based on recognized public health practices and procedures, sanitary engineering research and studies, and current technological development in equipment and methods. Such standards shall not apply to the management of solid waste accumulated by an individual or individual family or household unit and disposed of on his own property. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 4; c. 764, s. 1; 1977, c. 123.)

Editor's Note. —

The first 1975 amendment, effective Sept. 1, 1975, substituted "management" for "disposal" throughout the section.

The second 1975 amendment, effective Jan. 1, 1976, added subdivision (3) in the first paragraph.

The 1977 amendment added subdivision (4).

State Regulations Prevail over Conflicting and Inconsistent Local Ordinances; More Stringent Ordinances May Be Enacted pursuant to G.S. 153A-292. — See opinion of Attorney General to Mr. R. Kason Keiger, Town Attorney, Kernersville, N.C., 44 N.C.A.G. 40 (1974).

ARTICLE 13C.

Ground Absorption Sewage Disposal System Act of 1973.

§ 130-166.25. Improvements permit required.

Effect of Commission Rules on Local Rules. — The rules and regulations of a local board of health may permit the installation of a septic tank system or an alternative ground absorption sewage disposal system in soil classified as "unsuitable" if such installation will not have a detrimental effect on the public health. However, after the effective date of the rules and regulations of the Commission for Health Services governing sewage disposal, the provisions of such rules may apply. Opinion of Attorney General to Mr. Howard B. Campbell, 23 July 1975.

Mobile Home Placed on Lot for Storage of Sale or Occupied for Business Purposes. — Section requires any person who locates, relocates or causes to be located or relocated any mobile home to first obtain an improvements permit and requires a certificate of completion to be obtained before any person occupies a mobile home. Section does not require an improvements permit and a certificate of completion before a mobile home is placed on a lot for storage and for sale or before a mobile home is occupied for business purposes. Opinion of Attorney General to Mr. Ben Eaton, Division of Health Services, Department of Human Resources, 43 N.C.A.G. 410 (1974).

§ 130-166.29. Appeal to local board of health. — Any owner or builder denied an improvements permit or a certificate of completion under this Article shall have a right of appeal to the local board of health, provided such action is taken within 15 days of denial. Notice of appeal shall be given by filing with the local health director a demand for a hearing. Upon filing of such notice the local health director shall, within five working days, transmit to the board of health the papers and materials constituting the record upon which the decision appealed from was made.

The local board of health shall hold a hearing within 15 days of the receipt of the notice of appeal. The board shall give the appellant not less than five days' notice of the date, time, and place of the hearing. Any party may appear in person or by agent or attorney. In considering appeals, the board shall have authority only to determine whether a ground absorption system can be installed in compliance with its rules and regulations or whether the work done so complies.

No person denied an improvements permit or certificate of completion shall proceed with any work or improvement activity whatsoever or shall occupy any dwelling or reside in any mobile home unless and until the Department issues the necessary permit. (1973, c. 452, s. 9; 1977, c. 239.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "five working days" for "three days" in the third sentence of the first paragraph.

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

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

ARTICLE 14.

Meat Markets and Abattoirs.

§ 130-169. Application of Article. — The provisions of this Article shall not apply to meat markets, abattoirs, poultry processing plants, and other places where meat, meat products, or poultry products are prepared, handled, stored, or sold which are under continuous inspection by the North Carolina Department of Agriculture and/or the United States Department of Agriculture. (1937, c. 244, s. 4; 1957, c. 1357, s. 1; 1977, c. 706.)

Editor's Note. — The 1977 amendment rewrote this section.

ARTICLE 14A.

Sanitation of Shellfish and Crustacea.

§ 130-169.02. Agreements between Department of Human Resources and Department of Natural and Economic Resources. — Nothing in this Article is intended to deprive the Department of Natural Resources and Community Development of its authority to regulate aspects of the harvesting, processing, and handling of shellfish and crustacea relating to conservation of the fisheries resources of the State. The Department of Human Resources and the Department of Natural Resources and Community Development are authorized to enter into an agreement respecting the duties and responsibilities of each agency as to the harvesting, processing, and handling of shellfish and crustacea. (1965, c. 783, s. 1; 1973, c. 476, s. 128; c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 130-169.03. Construction of Article.

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

ARTICLE 14B.

Sanitation of Scallops.

§ 130-169.05. Agreements with other agencies. — Nothing in this Article is intended to deprive the Department of Natural Resources and Community Development of its authority to regulate aspects of the harvesting, processing, and handling of scallops relating to conservation of the fisheries resources of the State. The Department of Human Resources and the Department of Natural Resources and Community Development are authorized to enter into an agreement respecting the duties and responsibilities of each agency as to the harvesting, processing, and handling of scallops. (1967, c. 1005, s. 1; 1973, c. 476, s. 128; c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. — The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

ARTICLE 15.

Private Hospitals and Public and Private Educational Institutions.

§ 130-170. Regulation of sanitation by Commission for Health Services and Department of Human Resources.

This section authorizes the Commission for Health Services to adopt rules and regulations governing the sanitation of family foster homes. Opinion of Attorney General to Lela Moore Hall, 19 November 1975.

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

with the minimum sanitation standards adopted by the State Board, the Board may, at its discretion, require that the school administrative unit remit any unexpended funds provided by the State for custodial services. (1973, c. 1239, s. 1.)

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

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

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

ARTICLE 18.

Midwives.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

ARTICLE 20A.

Treatment of Self-Inflicted Injuries upon Prisoners.

§ 130-191.1. Procedure when consent is refused by prisoner. — When a board comprised of the Secretary of Correction, the chief medical officer of a prison hospital or penal institution, and a representative of the State or county social services department of the county where the prisoner is confined, shall convene and find as a fact that the injury to any prisoner was wilfully and intentionally self-inflicted and that an operation or treatment is necessary for the preservation or restoration of the health of the prisoner and that the prisoner is competent to act for himself or herself; and that attempts have been made to obtain consent for the proposed operation or treatment but such consent was refused, and the findings made by this board have been reduced to writing and entered into the prisoner's records as a permanent part thereof, then the local health director, as defined by G.S. 130-3, or in the event a local health director is not immediately available then the local health director of any adjoining or nearby area, shall be authorized to give or withhold, on behalf of the prisoner, consent to the operation or treatment.

In all cases coming under the provisions of this Article, the medical staff of the hospital or institution shall keep a careful and complete medical record of the treatment and surgical procedures undertaken. The record shall be signed by the chief medical officer of the hospital or institution and the surgeon performing any surgery. (1959, c. 1196; 1967, c. 996, s. 15; 1969, c. 982; 1973, c. 1262, s. 10.)

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

ARTICLE 21.

Postmortem Medicolegal Examinations.

§ 130-198. Medical examiners to be notified of certain deaths.

Local Modification. — Cleveland: 1977, c. 189; Rutherford: 1977, c. 189.

Editor's Note. — For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

§ 130-199. Duties of medical examiners upon receipt of notice; reports; fees.

Medical Examiners' Reports Are Public Records. — See opinion of Attorney General to Mr. Rodney C. Hobbs, Division of Health Services, 44 N.C.A.G. 193 (1974).

§ 130-200. When autopsies and other pathological examinations to be performed. — If, in the opinion of the Secretary of Human Resources or the medical examiner of the county wherein the body or anatomical material is first found under any of the circumstances set forth in G.S. 130-198, it is advisable and in the public interest that an autopsy or other pathologic study be made, or if an autopsy or other pathologic study is requested by the superior court district attorney or by any superior court judge on his own motion, or on a motion of any party, such autopsy or pathological study shall be made by the Secretary of Human Resources or by a competent pathologist designated by him, and a copy of the autopsy report shall be furnished the district attorney, judge, and requesting party. Upon such designation, the pathologist shall have the same immunity from personal liability as provided for medical examiners appointed pursuant to Chapter 130, Article 21, of the General Statutes.

In any case of death under circumstances set forth in G.S. 130-198 where a body shall be buried without a medical examination being made as specified in G.S. 130-199, or in any case where a body shall be cremated except in compliance with the provisions of this Article, it shall be the duty of the medical examiner of the county in which the body is buried or was cremated, upon being advised of such facts, to notify the superior court district attorney who shall communicate the same to any resident special, or assigned judge of the superior court, and such judge may order that the body or the remains be exhumed and an examination or autopsy performed thereon by the Secretary of Human Resources or a competent pathologist or toxicologist appointed by the Secretary of Human Resources. The pertinent facts disclosed by the examination or autopsy shall be communicated to the district attorney of the superior court and the judge who ordered it, for such action thereon as he, or the court of which he is judge, deems proper. A copy of the report of the examination or autopsy

findings and interpretations shall be filed with the superior court district attorney: Provided, that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown. If the deceased is a resident of the county where death occurred, the cost of the autopsy or pathological study shall be paid by the county; otherwise the Department of Human Resources shall pay the expense of the autopsy or pathological study. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 47, s. 2; c. 476, s. 128; 1975, c. 9.)

Editor's Note. — The first 1973 amendment substituted "district attorney" for "solicitor" throughout the section.

The second 1973 amendment substituted "Secretary of Human Resources" for "Chief Medical Examiner" and "Department of Human Resources" for "State Board of Health."

The 1975 amendment added the second sentence of the first paragraph.

Autopsy Reports, Except upon Exhumed Body or Remains, Are Public Records. — See opinion of Attorney General to Mr. Rodney C. Hobbs, Division of Health Services, 44 N.C.A.G. 193 (1974).

§ 130-202.1. When medical examiner's permission necessary before embalming, burial and cremation. — (a) In any case where it is the duty of the county medical examiner to view the body and investigate the death of a deceased person as herein provided, it shall be unlawful to embalm the said body until the written permission of the county medical examiner has first been obtained, and such county medical examiner shall make the certificate of death, stating thereon the name of the disease causing death; or, if from external causes,

(1) The means of death, and

(2) Whether (probably) accidental, suicidal, homicidal; and shall, in any case, furnish such information as may be required by the State Registrar of Vital Statistics in order properly to classify the death.

(b) It shall be unlawful to embalm or to bury a dead body, or to issue a burial-transit permit, when any fact within the knowledge of, or brought to the attention of, the embalmer, the funeral director, or the local registrar of vital statistics charged with the issuance of burial-transit permits, is sufficient to arouse suspicion of crime in connection with the death of the deceased, until the written permission of the county medical examiner has first been obtained.

(c) No cremation of a body shall be carried out until the county medical examiner shall have certified in writing that he has made inquiry into the cause and the manner of death and is of the opinion that no further examination concerning the same is necessary. This provision does not apply to deaths occurring less than 24 hours after birth unless the death falls within the circumstances described in G.S. 130-198. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1971, c. 444, s. 7; 1973, c. 873, s. 7.)

Editor's Note. —

The 1973 amendment, effective Jan. 1, 1975, deleted "required for a burial-transit permit" following "certificate of death" near the end of the introductory paragraph of subsection (a) and deleted "No burial-transit permit for cremation of a body shall be issued by the local registrar charged therewith and" at the beginning of subsection (c).

ARTICLE 26.

Regulation of Ambulance Services.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government

Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 130-230. Permit required to operate ambulance.

(b) Before a permit may be issued for a vehicle to be operated as an ambulance, its registered owner must apply to the Department for an ambulance permit. Application shall be made upon forms and according to procedures established by the Department. Prior to issuing an original or renewal permit for an ambulance, the Department shall determine that the vehicle for which the permit is issued meets all requirements as to medical equipment and supplies and sanitation as set forth in this Article and in the regulations of the North Carolina Medical Care Commission. Permits issued for ambulances shall be valid for a period specified by the Department, not to exceed one year.

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

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

Editor's Note. —

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

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

§ 130-232. Standards for equipment; inspection of medical equipment and supplies required for ambulances. — (a) The North Carolina Medical Care Commission shall adopt regulations specifying sanitation standards for ambulances. Regulations so adopted shall also require that the interior of the ambulance and the equipment within the ambulance be sanitary and maintained in good working order at all times.

(b) Every ambulance shall be equipped with the medical equipment and supplies specified by the "Minimal Equipment List for Ambulances and Dual Purpose Vehicles Serving as Ambulances" as approved by the Committee on Trauma of the American College of Surgeons on January 14, 1961; provided, however, the North Carolina Medical Care Commission may require additional equipment or supplies to be aboard ambulances or may delete items of medical equipment or supplies from the required Minimal Equipment List adopted herein by reference.

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

Editor's Note. —

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

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

§ 130-233. Certified personnel required. — (a) Every ambulance, except those specifically excluded from the operation of this Article, when operated on an emergency mission in this State shall be occupied by at least one certified emergency medical technician who shall be responsible for the medical aspects of the mission prior to arrival at the hospital and assuming no other person of higher certification or license is available, and one certified ambulance attendant who is responsible for the operation of the vehicle and rendering assistance to the emergency medical technician during the duration of the mission. The North

Carolina Medical Care Commission shall adopt regulations setting forth exemptions to this requirement applicable to situations where exemptions are considered by the Department to be in the public interest.

(b) The North Carolina Medical Care Commission shall adopt regulations setting forth the qualifications required for certification of ambulance attendants and emergency medical technicians. Such regulations shall be effective when approved by the Commission.

(c) A person desiring certification as emergency medical technician or as ambulance attendant shall apply to the Commission using forms prescribed by that agency. Upon receipt of such application the Commission or its representatives shall examine the applicant for emergency medical technician by written examination and the applicant for ambulance attendant by written or oral (if requested) examination and if it determines the applicant meets the examination requirements of its regulations duly adopted pursuant to this Article, it shall issue a certificate to the applicant. Emergency medical technician's and ambulance attendant's certificates so issued shall be valid for a period not to exceed two years and may be renewed after reexamination if the holder meets the requirements set forth in the regulations of the Commission. The Commission is authorized to cancel a certificate so issued at any time it determines that the holder no longer meets the qualifications prescribed for emergency medical technicians or for ambulance attendants.

(d) Duly authorized representatives of the Department may issue temporary certificates with or without examination when it finds that such will be in the public interest. Temporary certificates shall be valid for a period not exceeding 90 days. (1967, c. 343, s. 3; 1973, c. 476, s. 128; c. 725; c. 1224, s. 1; 1975, c. 612.)

Editor's Note. —

The third 1973 amendment substituted "North Carolina Medical Care Commission" for "Department, with the approval of the Emergency Medical Services Advisory Council," in the second sentence of subsection (a) and for "Commission for Health Services" in subsections (b) and (c), and deleted the second sentence of subsection (b).

The 1975 amendment rewrote subsection (a), added "and emergency medical technicians" at the end of the first sentence of subsection (b) and added the second sentence of that subsection, rewrote the first two sentences of subsection (c), added "Emergency medical technician's and" at the beginning of the third sentence of subsection (c), substituted "Commission" for "North Carolina Medical Care Commission" at the end of that sentence, substituted "Commission" for "the Department" near the beginning of the fourth sentence of that subsection and inserted "for emergency medical technicians or" near the end of that sentence.

Pediatric nurse may be substituted for a certified ambulance attendant on pediatric missions if the Department of Human Resources finds such to be in the public interest and the Medical Care Commission adopts a regulation so providing. Opinion of Attorney General to Dr. Richard R. Nugent, 44 N.C.A.G. 202 (1975).

ARTICLE 28.

Mass Gatherings.

§ 130-248. County ordinance authority not abrogated.

County Board of Commissioners May Not Define a Mass Gathering Lasting Less Than 24 Hours as a Nuisance. — See opinion of Attorney General to Mr. Robert C. Lewis, County Attorney, Lincoln County, 44 N.C.A.G. 142 (1974).

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

ARTICLE 29.

Perinatal Health Care.

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

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

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

(1) Community perinatal health care services, including health education for pregnant girls of school age, increased prenatal care, identification of high-risk pregnancies, and increased interconceptional care.

(2) Hospital perinatal health care, including a voluntary certification system for hospitals providing for graduated levels of complexity: level I hospitals to provide normal obstetric and neonatal care, level II hospitals to provide the more complicated obstetric and neonatal care, and level III hospitals to provide care for the most complicated maternal and neonatal problems.

(3) Regionalized perinatal health care services, including a plan for effective communication, consultation, referral and transportation links among hospitals, health departments, physicians, schools and other relevant community resources for mothers and infants at high risk for preventable mortality and morbidity. (1973, c. 1240, s. 1.)

§ 130-256. Powers and duties of Secretary. — The Secretary is authorized to establish procedures and guidelines for the development, implementation and evaluation of this program. He may make contracts with hospitals, local health departments, and other public or private and governmental or nongovernmental agencies and organizations to develop, implement and evaluate this program, including for the purposes of renovating and equipping hospitals and other health care facilities, salaries for health care professionals at such hospitals and

facilities and for patient care reimbursement. He shall request the appropriate area-wide health planning agencies for review and comments on any proposed contract involving purchase of perinatal health services in an area. (1973, c. 1240, s. 1.)

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

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

§§ 130-259 to 130-263: Reserved for future codification purposes.

ARTICLE 30.

Nursing Home Patients' Bill of Rights.

§ 130-264. Legislative intent. — It is the intent of the General Assembly to promote the interests and well-being of the patients in nursing homes and homes for the aged and infirm licensed pursuant to G.S. 130-9(e). It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights. (1977, c. 897, s. 1.)

Editor's Note. — Session Laws 1977, c. 897, s. 4, makes this Article effective Jan. 1, 1978.

§ 130-265. Definitions. — (a) "Administrator" means an administrator of a facility.

(b) "Facility" means a nursing home and a home for the aged and infirm licensed pursuant to G.S. 130-9(e).

(c) "Patient" means a person who has been admitted to a facility.

(d) "Representative Payee" means a person certified by the federal government to receive and disburse benefits for a recipient of governmental assistance. (1977, c. 897, s. 1.)

§ 130-266. Declaration of patients' rights. — All facilities shall treat their patients in accordance with the provisions of this Article. Every patient shall have the following rights:

(1) To be treated with consideration, respect, and full recognition of his dignity and individuality;

(2) To receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and State laws and rules;

(3) To receive at the time of admission and during his stay, a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and of related charges.

Charges for services not covered under Medicare or Medicaid shall be specified. Upon receiving such statement, the patient shall sign a written receipt which must be retained by the facility in the patient's file;

(4) To have on file in the patient's record a written or verbal order of the attending physician containing such information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical treatment. The patient shall give prior informed consent to participation in experimental research. Written evidence of compliance with this subdivision, including signed acknowledgments by the patient, shall be retained by the facility in the patient's file;

(5) To receive respect and privacy in his medical care program. Case discussion, consultation, examination, and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract;

(6) To be free from mental and physical abuse and, except in emergencies, to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need;

(7) To receive from the administrator or staff of the facility a reasonable response to his requests;

(8) To associate and communicate privately and without restriction with persons and groups of his own choice on his own or their initiative at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read his or her own mail; to have access at any reasonable hour to a telephone where he may speak privately; and to have access to writing instruments, stationery, and postage;

(9) To manage his own financial affairs unless such authority has been delegated to another pursuant to a power of attorney, or written agreement, or some other person or agency has been appointed for such purpose pursuant to law. Nothing shall prevent the patient and facility from entering a written agreement for the facility to manage the patient's financial affairs. In the event that the facility manages the patient's financial affairs, it shall have available for inspection an accounting and shall furnish the patient with a quarterly statement of the patient's account. The patient shall have reasonable access to such account at reasonable hours; the patient or facility may terminate the agreement for the facility to manage his financial affairs at any time upon five days' notice;

(10) To enjoy privacy in visits by his spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room;

(11) To enjoy privacy in his room;

(12) To present grievances and recommend changes in policies and services, personally or through other persons or in combination with others, on behalf of himself or others to the facility's staff, the community advisory committee, the administrator, the Department of Human Resources, or other persons or groups without fear of reprisal, restraint, interference, coercion, or discrimination;

(13) To not be required to perform services for the facility without his consent and the written approval of the attending physician;

(14) To retain, to secure storage for, and to use his personal clothing and possessions, where reasonable;

(15) To not be transferred or discharged from a facility except for medical reasons, the patient's own or other patients' welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. The patient shall be given at least five days' advance notice to insure orderly transfer or discharge, unless the attending physician orders immediate transfer, and such actions, and the reasons therefor, shall be documented in his medical record. (1977, c. 897, s. 1.)

§ 130-267. Incompetence. — If the patient is adjudicated incompetent or designates another in writing the power to manage his financial affairs, then in such event, his attorney-in-fact, guardian of the person, general guardian, or such other person, no matter how designated, may sign any documents required by the provisions of this Article, may otherwise do or perform any other act, and may receive or furnish any information required by this Article. (1977, c. 897, s. 1.)

§ 130-268. No waiver of rights. — No facility may require a patient to waive the rights specified in G.S. 130-266. (1977, c. 897, s. 1.)

§ 130-269. Notice to patient. — (a) A copy of this Article shall be posted conspicuously in a public place in all facilities. Copies of this Article shall be furnished to the patient upon admittance to the facility, to all patients currently residing in the facility, to the sponsoring agency, to a representative payee of the patient, or to any person designated in G.S. 130-267, and to the patient's next of kin, if requested. Receipts for the statement signed by these persons shall be retained in the facility's files.

(b) The address and telephone number of the section in the Department of Human Resources responsible for the enforcement of the provisions of this Article shall be posted and distributed with copies of the Article. The address and telephone number of the county social services department shall also be posted and distributed. (1977, c. 897, s. 1.)

§ 130-270. Responsibility of administrator. — Responsibility for implementing the provisions of this Article shall rest on the administrator of the facility. (1977, c. 897, s. 1.)

§ 130-271. Staff training. — Each facility shall provide appropriate staff training to implement each patient's right included in G.S. 130-266. (1977, c. 897, s. 1.)

§ 130-272. Civil action. — Every patient shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Article. The Department of Human Resources, a general guardian, or any person appointed as guardian ad litem pursuant to law, may institute an action pursuant to this section on behalf of the patient or patients. Any agency or person above named may enforce the rights of the patient specified in G.S. 130-266 which the patient himself is unable to enforce. (1977, c. 897, s. 1.)

§ 130-273. Enforcement and investigation; confidentiality. — (a) The Department of Human Resources shall be responsible for the enforcement of the provisions of this Article. The Department shall investigate complaints made to it and reply within a reasonable time, not to exceed 60 days, upon receipt of a complaint.

(b) The Department is authorized to inspect patients' medical records maintained at the facility when necessary to investigate any alleged violation of this Article.

(c) The Department shall maintain the confidentiality of all persons who register complaints with the Department and of all medical records inspected by the Department. (1977, c. 897, s. 1.)

§ 130-274. Revocation of license. — The Department of Human Resources shall have the authority to revoke a license issued pursuant to G.S. 130-9(e) in any case where it finds that there has been a substantial failure to comply with the provisions of this Article.

Such revocation shall be effected by mailing to the licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department of Human Resources requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department of Human Resources may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed. (1977, c. 897, s. 1.)

§ 130-275. Penalties; remedies. — (a) The Department shall impose an administrative penalty in accordance with provisions of this Article on any facility:

(1) Which substantially fails to comply with this Article, or

(2) Which refuses to allow an authorized representative of the Department of Human Resources to inspect the premises and records of the facility.

(b) Each day of a continued violation shall constitute a separate violation. The penalty for each violation shall be ten dollars ($10.00) per day per patient affected by the violation.

(c) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act.

(d) The secretary may bring a civil action in the Superior Court of Wake County to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 150A-36. (1977, c. 897, s. 1.)

§ 130-276. Provisions inapplicable. — G.S. 130-203 and 130-205 shall be inapplicable to this Article. (1977, c. 897, s. 1.)

§ 130-277. No interference with practice of medicine or physician-patient relationship. — Nothing in this Article shall be construed to interfere with the practice of medicine or the physician-patient relationship. (1977, c. 897, s. 3.)

Chapter 131.

Public Hospitals.

ARTICLE 1.

Orthopedic Hospital.

§ 131-3. Establishment of school. — There is hereby created and established in the North Carolina Orthopedic Hospital at Gastonia a school which shall be operated for a period of 12 months in each year, or such period during each year as the Department of Human Resources may deem advisable, under the direction and supervision of the County Board of Education of Gaston County.

A principal and the necessary number of teachers in said school shall be selected by the Department upon the recommendation of the County Superintendent of Public Instruction of Gaston County, which teachers shall hold certificates according to standards prescribed by the State Board of Education for teachers in the public schools of the State. (1939, c. 186; 1973, c. 476, s. 163; 1977, c. 105, s. 1.)

Editor's Note. —

The 1977 amendment deleted "for patients" following "a school" near the beginning of the first paragraph.

Session Laws 1977, c. 105, s. 2, provides: "State appropriations for the education program at the North Carolina Orthopedic Hospital shall not be increased to provide additional support for the school authorized by this act."

ARTICLE 2.

Hospitals in Counties, Townships, and Towns.

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

Cited in Sides v. Cabarrus Mem. Hosp., 22 N.C. App. 117, 205 S.E.2d 784 (1974); Sides v. Cabarrus Mem. Hosp., 287 N.C. 14, 213 S.E.2d 297 (1975).

ARTICLE 3.

County Tuberculosis Hospitals.

§ 131-29. Power to establish.

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

ARTICLE 7.

McCain Hospital.

§ 131-53.1. Treatment of related diseases. — McCain Hospital, in addition to the power and authority vested in it for the treatment of persons afflicted with tuberculosis, is authorized to admit and treat patients afflicted with pulmonary, cancer, and other chronic diseases to the same extent as it now accepts and treats persons afflicted with tuberculosis. (1977, c. 467, s. 1.)

§ 131-54. Indigent patients; recovery of charges from those able to pay. — The said Board of Directors of North Carolina Specialty Hospitals in determining the qualifications for admission for those applying as patients to the institution and in making bylaws and regulations for the governing therein shall not provide or make any bylaw, regulation, or qualification for admission therein which shall exclude any patient, otherwise properly qualified for admission, on account of inability to pay for examination and treatment, or either, at said institution. All indigent patients, who otherwise are proper patients for admission in said institution when there is space and accommodation for such patients, shall be received without regard to their indigent condition; but the Board of Directors of North Carolina Specialty Hospitals shall require of all patients who are able, including those having persons upon whom they are legally dependent who are able, to pay the reasonable cost of treatment and care of said institution and they shall make such bylaws and regulations as shall most equitably carry out the directions contained in G.S. 131-153. In case those persons upon whom patients are legally dependent or patients not indigent shall refuse to pay such charges for treatment and care, then said Department of Human Resources are [is] authorized and empowered to institute an action in the name of the said hospital in the Superior Court of Hoke County for the collection thereof, and if the amount so charged is less than two hundred dollars ($200.00), then said action shall be instituted in the county where the defendant resides in a court having jurisdiction thereof; and upon said trial the charges so made shall be collectible, as upon express promise to pay the same. Provided, that nothing in this section shall be interpreted to conflict with or interfere with the provisions contained in G.S. 131-60. (1924, c. 86, s. 1; 1925, c. 291; 1939, c. 332; 1955, c. 287, ss. 1, 2; 1957, c. 1246; 1973, c. 476, s. 161; 1977, c. 467, s. 2.)

Editor's Note. —
The 1977 amendment substituted "North Carolina Specialty Hospitals" for "Tuberculosis Sanatoriums" in the first and second sentences and "hospital" for "sanatorium" in the third sentence.

§ 131-56: Repealed by Session Laws 1977, c. 467, s. 3.

§ 131-57. Cases of tuberculosis reported to Department of Human Resources.

Editor's Note. —
For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

§ 131-58. Department of Human Resources may receive gifts for hospital. — The Department of Human Resources shall be empowered to receive or accept the gifts or donations for the benefit of the McCain Hospital, and the Department of Human Resources shall, in their [its] discretion, use the same for carrying out the purpose for which the hospital is established. (1907, c. 964, s. 14; Ex. Sess. 1913, c. 40, s. 6; C. S., s. 7177; 1973, c. 476, s. 161; 1977, c. 467, s. 4.)

Editor's Note. —
The 1977 amendment substituted "McCain Hospital" for "the State sanatorium" and "hospital" for "sanatorium."

ARTICLE 8.

Western North Carolina Hospital.

§ 131-61.1. Treatment and control of patients. — Western North Carolina Hospital for the Treatment of Tuberculosis, Cancer, Drug and Alcohol Addiction and Other Chronic Diseases is authorized to admit and treat patients afflicted with cancer, drug and alcohol addiction and other chronic diseases in the same manner as it now admits and treats patients afflicted with tuberculosis and shall have the same duties, responsibilities and control over persons thus admitted as it now has over tuberculosis patients. (1973, c. 594, s. 3; 1977, c. 467, s. 5.)

Editor's Note. — The 1977 amendment substituted "Hospital" for "Sanatorium" near the beginning of the section.

§ 131-72. Gifts and grants from governments or agencies; bond issues. — In addition to the powers generally granted to bodies corporate in North Carolina, the "Western North Carolina Hospital" shall have and is hereby granted authority to receive gift or grant from the United States government or any other agency or government, and shall have the right by vote of the Department of Human Resources, approved by the Treasurer of the State of North Carolina, to issue bonds of said institution payable solely out of the receipts or revenues of any undertaking engaged in or undertaken by said Department for which said bonds were issued, but shall not have the right to pledge any property of the institution or to make said bonds an obligation of said institution further than the revenue derived from the projects for which the bonds were issued, and said bonds so issued shall not be a charge upon the general property of the Western North Carolina Hospital, nor any obligation of the State of North Carolina. (1935, c. 91, s. 12; 1973, c. 476, s. 161; 1977, c. 467, s. 6.)

Editor's Note. — The 1977 amendment substituted "Western North Carolina Hospital" for "Western North Carolina Sanatorium for the Treatment of Tuberculosis" in two places.

§ 131-73. State Treasurer as treasurer of hospital. — The Treasurer of the State of North Carolina shall be ex officio treasurer of said corporation and shall keep all accounts of said hospital and pay out all moneys to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1935, c. 91, s. 13; 1977, c. 467, s. 7.)

Editor's Note. — The 1977 amendment substituted "hospital" for "sanatorium."

§ 131-74. Gifts and donations for benefit of hospital. — The said Department of Human Resources shall be empowered to receive or accept gifts or donations for the benefit of said hospital which shall be used by said Department in their [its] discretion for the purpose of carrying out the work for which the hospital is established. (1935, c. 91, s. 16; 1973, c. 476, s. 161; 1977, c. 467, s. 8.)

Editor's Note. —
The 1977 amendment substituted "hospital" for "sanatorium" in two places.

ARTICLE 9.

Eastern North Carolina Hospital.

§ 131-76. Establishment of Eastern North Carolina Hospital. — There shall be established in eastern North Carolina, in the manner hereinafter set out, a hospital for the treatment of persons afflicted with tuberculosis, pulmonary, cancer, and other chronic diseases, to be known as the "Eastern North Carolina Hospital." (1939, c. 325, s. 1; 1973, c. 462, s. 2; 1977, c. 467, s. 9.)

Editor's Note. —
The 1977 amendment substituted "hospital" for "sanatorium" and inserted "pulmonary, cancer, and other chronic diseases."

§ 131-77. Control of hospital by Department of Human Resources. — The control of said hospital authorized by the provisions of this Article shall be vested in the Department of Human Resources appointed by the Governor of North Carolina under the provisions of G.S. 131-62 and their successors in office. (1939, c. 325, s. 2; 1973, c. 476, s. 161; 1977, c. 467, s. 10.)

Editor's Note. —
The 1977 amendment substituted "hospital" for "sanatorium."

§ 131-78.1: Repealed by Session Laws 1977, c. 467, s. 11.

Cross Reference. — For provisions authorizing McCain Hospital to treat diseases related to tuberculosis, see § 131-53.1.

§ 131-80. State Treasurer to act as ex officio treasurer of hospital. — The Treasurer of the State of North Carolina shall be ex officio treasurer of said hospital and shall keep all accounts of said hospital and pay out all moneys to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1939, c. 325, s. 6; 1977, c. 467, s. 12.)

Editor's Note. — The 1977 amendment substituted "hospital" for "sanatorium."

§ 131-81. Gifts and donations. — The said Department of Human Resources are [is] empowered to receive or accept gifts or donations for the benefit of said hospital which shall be used by said Department in their [its] discretion for the purpose of carrying out the work for which the hospital is established. (1939, c. 325, s. 12; 1973, c. 476, s. 161; 1977, c. 467, s. 13.)

Editor's Note. —
The 1977 amendment substituted "hospital" for "sanatorium."

ARTICLE 9A.

Gravely Hospital.

§ 131-82.1: Repealed by Session Laws 1977, c. 467, s. 14.

ARTICLE 10.

Funds of Deceased Inmates.

§ 131-83. Applied to debts due by such inmates to such hospitals or institutions. — Whenever any funds shall be placed or deposited with the officials of any State hospital or other charitable institution by or for any patient or inmate thereof, and the person by or for whom such deposit is made dies while a patient or inmate of such State hospital or other charitable institution or leaves such institution and at the time of such death, or departure, such patient or inmate is indebted to said hospital or other charitable institution for care and maintenance while such patient or inmate, the Department of Human Resources is hereby authorized, empowered and directed to apply such deposit, or so much thereof as may be necessary, and which may remain in its hands unclaimed for the space of three years after such death or departure on and in satisfaction of the indebtedness of such patient or inmate, to said State hospital or other charitable institution for said care and maintenance. If the whole of such amount so on deposit shall not be required or necessary for the payment in full of such indebtedness for such care and maintenance, the remainder shall continue to be held by said officials, and paid out and applied as may be by law required. (1933, c. 352, s. 1; 1973, c. 476, s. 161; 1975, c. 19, s. 44.)

Editor's Note.—
The 1975 amendment corrected errors in the 1973 amendatory act by substituting "is" for "are" following "Department of Human Resources," and "its" for "their" preceding "hands," in the first sentence.

ARTICLE 11.

Sanatorium for Tubercular Prisoners.

§§ 131-84 to 131-89: Repealed by Session Laws 1975, c. 518, s. 1, effective July 1, 1975.

ARTICLE 12.

Hospital Authorities Law.

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

(1) To investigate into hospital, medical and health conditions and into the means and methods of improving such conditions;

(2) To determine where inadequate hospital and medical facilities exist;

(3) To study and make recommendations concerning the plan of any city, town or county located within its boundaries in relation to the problem of providing adequate hospital, medical and nursing facilities, and the providing of adequate hospital, medical and nursing facilities for the inhabitants of such city, town or county and area, including persons of low income in such city, town or county and area;
(4) To prepare, carry out and operate hospital facilities;
(5) To provide and operate outpatient departments, maternity clinics and any other clinics customarily operated in hospitals in metropolitan centers;
(6) To provide teaching and instruction programs and schools for medical students, interns, physicians and nurses;
(7) To provide and maintain continuous resident physician and intern medical services;
(8) To appoint an administrator, a superintendent or matron, and necessary assistants, and any and all other employees deemed necessary or advisable and fix their compensation, and to remove such appointees;
(9) To adopt bylaws for the conduct of its business;
(10) To adopt necessary rules and regulations for the government of the authority and its employees;
(11) To enter into contracts for necessary supplies, equipment or services incident to the operation of its business;
(12) To appoint such committees or subcommittees as it shall deem advisable, and fix their duties and responsibilities, and to do all things necessary in connection with the construction, repair, reconstruction, management, supervision, control and operation of its business, including but not limited to the hospital and all departments thereof;
(13) To accept donations of money, personal property or real estate for the benefit of the authority and take title thereto from any person, firm, corporation or society desiring to make such donations;
(14) To determine and regulate the conditions under which the privilege of practicing within any hospital operated by the authority may be available to physicians, and to promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospital;
(15) To establish and maintain a training school for nurses;
(16) To make rules and regulations governing the admission of patients to, and the care, conduct, and treatment of patients in, the hospital;
(17) To determine whether patients presented to the hospital for treatment are subjects for charity and to fix the compensation to be paid by patients other than those unable to assist themselves;
(18) To maintain and operate isolation wards for the care and treatment of mental, contagious or other similar diseases;
(19) To provide for the construction, reconstruction, improvement, alteration or repair of any hospital facility or any part thereof;
(20) To take over by purchase, lease or otherwise any hospital facility located within its boundaries undertaken by any government, or by any city, town or county located in whole or in part within its boundaries;
(21) To acquire by purchase, gift, devise, lease, condemnation or otherwise any existing hospital facilities provided, that no property belonging to any city, town or county or to any government or to any religious or charitable corporation or to any existing hospital or clinic may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation;

(22) To enter into contracts or other arrangements with any municipality or other public agency of this or any other state or of the United States or with any individual, private organization or nonprofit association for the provision of hospital, clinic, or similar services;

(23) To lease any hospital facilities to or from any municipality or other public agency of this or any other state or of the United States or to any individual, corporation or association on such terms and subject to such conditions as will carry out the purposes of this Article. The authority may provide in any lease made hereunder for the lessee to use, operate, manage and control the hospital facilities, and to exercise designated powers in connection therewith, in the same manner as the authority itself might do;

(24) To act as agent for the federal, State or local government in connection with the acquisition, construction, operation and/or management of a hospital facility, or any part thereof;

(25) To arrange with any city, town or county located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities, or for the acquisition by such city, town or county or a government of property, options or property rights or for the furnishing of property or services in connection with a facility;

(26) To arrange with the State, its subdivisions and agencies, and any county, city or town of the State, to the extent that it is within the scope of each of their respective functions,

a. To cause the services customarily provided by each of them to be rendered for the benefit of such hospital authority and

b. To provide and maintain parks and sewage, water and other facilities adjacent to or in connection with hospital facilities and to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital facility and to establish and revise the rents or charges therefor;

(27) To purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, town or county, or government;

(28) To acquire by eminent domain any real property, including improvements and fixtures thereon provided, that no property belonging to any city, town or county or to any government or to any religious or charitable corporation or to any existing hospital or clinic may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation;

(29) To sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, city, town or county or government;

(30) To own, hold, clear and improve property;

(31) To insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;

(32) To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues in the manner and to the extent hereinafter provided;

(33) In connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this Article;

(34) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds subject to their control;
(35) To sue and be sued;
(36) To have a seal and to alter the same at pleasure;
(37) To have perpetual succession;
(38) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;
(39) To make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this Article, to carry into effect the powers and purposes of the authority;
(40) To remove vehicles parked on land owned or leased by the hospital authority in areas clearly designated as no parking or restricted parking zones. An owner of a removed vehicle, as a condition of regaining possession of the vehicle, shall reimburse the hospital authority for all reasonable costs, not to exceed twenty dollars ($20.00), incidental to the removal and storage of the vehicle provided that the designation of the area as a no parking or restricted parking zone clearly indicates that the owner may be subject to such costs.

(1977, c. 178.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added subdivision (40) to subsection (a).

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

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

§ 131-110. Tax exemptions. — The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority used for public purposes shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Any bonds, notes, debentures or other evidence of indebtedness of an authority issued under the provisions of The Local Government Revenue Bond Act, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1943, c. 780, s. 21; 1971, c. 799; 1973, c. 695, s. 6; 1977, c. 268.)

Editor's Note. —

The 1977 amendment, effective for taxable years beginning on and after Jan. 1, 1977, rewrote the last sentence.

ARTICLE 13.

Department of Human Resources and Program of Hospital Care.

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

(b) The Department of Human Resources is hereby authorized and empowered to act as the agency of the State of North Carolina for the purpose of setting up and administering any statewide plan in accordance with standards adopted by the North Carolina Medical Care Commission for the construction and maintenance of hospitals, public health centers and related facilities and to receive and administer any funds which may be provided by the General Assembly of North Carolina and by the Congress of the United States for such purpose. The Department, as such agency of the State of North Carolina, shall have the right to promulgate such statewide plans for the construction and maintenance of hospitals, medical centers and related facilities, or such other plans as may be found desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard thereto. The Department shall be authorized to receive and administer any funds which may be appropriated by any act of Congress or of the General Assembly of North Carolina for the construction of hospitals, medical centers and related activities or facilities, which may at any time in the future become available for such purposes. The Department shall be further authorized to receive and administer any other federal funds or State funds which may be available in the furtherance of any activity in which the Department is authorized and empowered to engage under the provisions of this Article establishing said Department, and in connection therewith the North Carolina Medical Care Commission is authorized to adopt such rules and regulations as may be necessary to carry out the intent and purposes of this Article; to adopt such reasonable and necessary standards with reference thereto as may be proper to fully cooperate with the Surgeon General or other agency or department of the United States with the approval of the federal advisory council in the use of funds provided by the federal government, and at all times make such reports and give such information to the Surgeon General or other agency or department of the United States as may be required.

(e) Out of the funds appropriated and made available by the State, the North Carolina Medical Care Commission shall make grants-in-aid to counties, cities, towns and subdivisions of government to acquire real estate and construct thereon hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities which have been or may be acquired by such municipalities or subdivisions of government for use as community hospitals. The appropriations and funds made available by the State shall be allocated, apportioned and granted for the purposes above set forth and for such other related objects or purposes as shall be determined in each case by the North Carolina Medical Care Commission in accordance with the standards, rules and regulations as determined, adopted and promulgated by the North Carolina Medical Care Commission. The North Carolina Medical Care Commission may furnish financial and other types of aid and assistance to any nonprofit hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual, upon the same terms and conditions as such aid and financial assistance is granted to municipalities and subdivisions of government.

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

Editor's Note. —

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

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

§ 131-121. Medical and other students; loan fund. — For the purpose of increasing the number of qualified people in the health services in North Carolina and especially in communities of limited population, mental health facilities and other areas where a shortage of health personnel exists, the Department of Human Resources is hereby authorized and empowered, in accordance with such regulations as the North Carolina Medical Care Commission may adopt, to make loans and award scholarships to students who are residents of North Carolina and who may wish to become physicians, dentists, optometrists, pharmacists, nurses, nurse instructors, nurse anesthetists, medical technicians, social workers, psychologists and students who are enrolled in other studies to be decided by the Commission leading to specialization in the health professions and who are accepted in any school, college or university giving accredited courses in these specialized areas provided such students shall agree that upon graduation and being duly licensed or qualified to practice their profession in North Carolina in such field, geographic area or facilities as the Commission may designate for one calendar year for each academic year or fraction thereof for which a loan or scholarship is granted. The loans shall bear such interest rate as contracted for not to exceed the per annum interest rate allowed by law. The Department shall have the authority to cancel any contract made between it and any applicant for assistance upon such cause deemed sufficient by the Department; provided, the assent to cancellation be first obtained from the Attorney General of North Carolina. The North Carolina Medical Care Commission is hereby granted full power and authority to make reasonable rules and regulations so as to implement and promote the student loan and scholarship program in the best interests of the State.

The Department of Human Resources is hereby authorized and empowered to expend up to thirty thousand dollars ($30,000) per biennium from its appropriations for scholarship loans for the purposes of establishing programs for the recruitment of persons interested in embarking upon careers in the health professions who are eligible for financial assistance under G.S. 131-121, 131-121.3 and 131-124, encouraging nonpracticing nurses to return to their profession and encouraging the establishment of new training schools of nursing.

All funds heretofore appropriated to the North Carolina Medical Care Commission for student loans and scholarships, including the appropriation made by Chapter 1185 of the Session Laws of 1963, shall be administered by the Department pursuant to the provisions of this section. This section shall be applicable also to all loans or scholarship funds repaid to the Department pursuant to this program. (1945, c. 1096; 1947, c. 933, s. 2; 1949, c. 1019; 1953, c. 1222; 1959, c. 1028, ss. 1-4; c. 1165; 1963, c. 365, s. 1; c. 493; 1965, c. 485, s. 1; c. 1154; 1969, cc. 1069, 1219; 1973, c. 476, s. 152; c. 1090, s. 1.)

Editor's Note. —

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

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

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

ARTICLE 13A.

Hospital Licensing Act.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 131-126.3. Licensure. — After July 1, 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. (1947, c. 933, s. 6; 1963, c. 66; 1973, c. 476, s. 152; 1975, c. 718, s. 2.)

Editor's Note. — The 1975 amendment deleted the former second sentence, which exempted certain X-ray facilities from the application of former Chapter 104C.

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

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

For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

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

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

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by said North Carolina Medical Care Commission. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to G.S. 131-126.14 hereof. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the aforesaid rules. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1.)

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

§ 131-126.9. Inspections and consultations. — The Department of Human Resources shall make or cause to be made such inspections as it may deem necessary. The Department of Human Resources may delegate to any State officer, agent, board, bureau or division of State government authority to make such inspections as the Department of Human Resources may designate and according to rules and regulations promulgated by the North Carolina Medical Care Commission. The Department of Human Resources may revoke such delegated authority in its discretion and make its own inspections according to the powers granted hereunder. The North Carolina Medical Care Commission may prescribe by regulations that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct

new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the Department of Human Resources for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1.)

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

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

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

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

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

ARTICLE 13B.

Additional Authority of Subdivisions of Government to Finance Hospital Facilities.

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

(b) Out of funds made available by the State, the Department of Human Resources shall make grants-in-aid, as provided in this subsection, to municipalities and/or nonprofit associations to acquire real estate and construct thereon hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities which have been or may be acquired by such municipalities and/or nonprofit associations for use as community hospitals. The amount of State funds to be granted hereunder shall be determined in each case by the North Carolina Medical Care Commission in accordance with standards, rules and regulations as determined by the North Carolina Medical Care Commission.

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

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

ARTICLE 13C.

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

§ 131-126.31. Petition for formation of hospital district; hearing. — Upon receipt of a petition, signed by at least 500 of the qualified voters of the territory described in such petition, praying that such territory be created into a hospital district, the North Carolina Medical Care Commission, with the approval of the board of county commissioners of the county in which such proposed hospital district is located, shall cause notice to be given by posting at the courthouse door, and at three public places in such proposed hospital district, and by three weekly publications in a newspaper circulating in such proposed hospital district, that on a date to be named in such notice, which shall not be earlier than 20 days after the first posting and publication of such notice, it will hold a public hearing at a designated place within the proposed hospital district or some designated place within the county in which the district is to be created, upon the question of creating a hospital district comprising the territory described in such petition and set forth in such notice, and that any taxpayer or other interested person may appear and be heard at the time and place set forth in such notice.

Such petition shall set forth:

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

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

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

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

§ 131-126.32. Result of hearing; name of district; limitation of actions. — If, after such hearing, the North Carolina Medical Care Commission shall deem it advisable to create such hospital district, it shall adopt a resolution creating such district, determining that the residents of all the territory to be included in such district will be benefited by the creation of such district; and defining the territory comprising such district, which shall be either the territory described in such petition or a part of such territory; provided, however, that all the territory embraced in a hospital district shall be located in one county; and provided, further, that no municipality or part thereof shall be included in any hospital district unless the governing body of such municipality shall have approved thereof by resolution and shall have filed with the Department of Human Resources a certified copy of such resolution. Each hospital district so created shall be designated by the North Carolina Medical Care Commission as the ". . . . . Hospital District of . . . . . County," inserting in the blank spaces some name identifying the locality and the name of the county.

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

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

Any action or proceeding questioning the validity of said resolution or the creation of said ..... Hospital District of ..... County or the inclusion in said district of any of the territory described in said resolution, must be commenced within 30 days after the first publication of said resolution.

. . . . . .

Secretary of the Department of Human Resources

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

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

ARTICLE 14.

Cerebral Palsy Hospital.

§ 131-127. Creation of hospital; powers. — An institution, to be known and designated as "The Lenox Baker Children's Hospital" is hereby created and such institution is authorized and empowered to accept and use donations and appropriations and do all things necessary and requisite to be done in furtherance of the purpose of its organization and existence as herein set forth. (1945, c. 504, s. 1; 1953, c. 893, s. 1; 1973, c. 115, s. 1; 1977, c. 467, s. 15.)

Editor's Note. — The 1977 amendment substituted "'The Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina.'" for "'The Lenox Baker Children's Hospital'" for "'The

§ 131-132. Appointment and discharge of superintendent; qualifications and compensation. — The Department of Human Resources shall appoint a superintendent of the institution, who shall be a person of professional training and experience in the care and treatment of spastic ailments, and may fix the compensation of the superintendent, subject to the approval of the Department

of Administration, and may discharge the superintendent at any time for cause. (1945, c. 504, s. 6; 1957, c. 269, s. 1; 1973, c. 476, s. 162.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" near the end of the section. See § 143-344(a).

§ 131-133. Aims of hospital; application for admission. — The prime purpose and aim of The Lenox Baker Children's Hospital is to treat, care for, train, and educate as their condition will permit all cerebral palsied children of training age in the State who are capable of being rehabilitated; to disseminate knowledge concerning the extent, nature, and prevention of such disabling ailments, and to that end, subject to such rules and regulations as the Board of Directors may adopt, there shall be received into said hospital, cerebral palsied children under the age of 21 years when, in the judgment of the Board of Directors, it is deemed advisable. The hospital may be made available for the treatment of patients with other neuromuscular and skeletal disabilities who are in need of rehabilitation so long as doing so does not in any way deprive a cerebral palsied child qualified as their condition will permit for admission for treatment, care, training and education.

Application for the admission of a child must be made by a parent or person standing in loco parentis or by the person, institution or agency having legal custody of the child. (1945, c. 504, s. 7; 1953, c. 893, s. 2; 1957, c. 170, s. 1; 1973, c. 115, s. 1; 1977, c. 467, s. 16.)

Editor's Note. — The 1977 amendment substituted "The Lenox Baker Children's Hospital" for "The Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina" near the beginning of the first paragraph.

ARTICLE 16.

Department of Human Resources Hospital Facilities Finance Act.

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

ARTICLE 17.

Medical Review Committee.

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

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

Chapter 131A.

Health Care Facilities Finance Act.

Editor's Note. — Session Laws 1975, c. 766, s. 3, provides: "This act shall become effective upon certification by the State Board of Elections that an amendment to the North Carolina Constitution authorizing the enactment of general laws dealing with the transactions of the type contemplated by this act has been approved by the people of the State." Such an amendment was proposed by Session Laws 1975, c. 641, and adopted by vote of the people at the election held March 23, 1976. See N.C. Const., Art. V, § 8.

Session Laws 1975, c. 766, s. 2, contains a severability clause.

§ 131A-1. Short title. — This Chapter shall be known, and may be cited, as the "Health Care Facilities Finance Act." (1975, c. 766, s. 1.)

§ 131A-2. Legislative findings. — It is hereby declared to be the policy of the State of North Carolina to promote the public health and welfare by providing means for financing, refinancing, acquiring, constructing, equipping and providing of health care facilities to serve the people of the State and to make accessible to them modern and efficient health care facilities.

The General Assembly hereby finds and declares that:

(1) There is a need to overcome existing and anticipated physical and technical obsolescence of existing health care facilities and to provide additional modern and efficient health care facilities in the State; and

(2) Unless measures are adopted to alleviate such need, the shortage of such facilities will become increasingly more urgent and serious; and

(3) In order to meet such shortage and thereby promote the public health and welfare of the people of the State, it is necessary for the State to assist in the providing of adequate modern and efficient health care facilities in the State so that health and hospital care and services may be expanded, improved and fostered to the fullest extent practicable.

The General Assembly hereby further finds and declares that the financing, refinancing, acquiring, constructing, equipping and providing of health care facilities are public uses and public purposes and that enactment of this Part is necessary and proper for effectuating the purposes hereof. (1975, c. 766, s. 1.)

§ 131A-3. Definitions. — As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Bonds" or "notes" means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the Commission under this Chapter;

(2) "Commission" means the North Carolina Medical Care Commission, created by Part 10 of Article 3 of Chapter 143B of the General Statutes, or, should said Commission be abolished or otherwise divested of its functions under this Chapter, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Chapter to the Commission;

(3) "Cost" as applied to any health care facilities means the cost of construction or acquisition; the cost of acquisition of property, including rights in land and other property, both real and personal and improved and unimproved; the cost of demolishing, removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved or relocated; the cost of all machinery, fixed and movable equipment and furnishings; financing charges, interest prior to and during construction and, if deemed advisable by the Commission, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications; the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or acquiring such health care facilities; the cost of administrative and other expenses necessary or incident to the construction or acquisition of such health care facilities, and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service; the cost of reimbursing any public or nonprofit agency for any payments made for any cost described above or the refinancing of any cost described above, provided that no payment shall be reimbursed or any cost be refinanced if such payment was made or such cost was incurred earlier than two years prior to the effective date of this Chapter; provided further, that it is the intent that any costs described above shall be payable solely from the revenues of the health care facilities;

(4) "Health care facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation: general hospitals, chronic diseases, maternity, mental, tuberculosis and other specialized hospitals; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administration buildings, central service and other administrative facilities; communication, computer and other electronic facilities, fire-fighting facilities, pharmaceutical and recreational facilities; storage space, X-ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for health care facilities staff members and physicians; and such other health care facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land,

machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities;

(5) "Non-profit agency" means any nonprofit private corporation existing or hereafter created and empowered to acquire, by lease or otherwise, operate or maintain health care facilities;

(6) "Public agency" means any county, city, town, hospital district or other political subdivision of the State existing or hereafter created pursuant to the laws of the State authorized to acquire, by lease or otherwise, operate or maintain health care facilities; and

(7) "State" means the State of North Carolina. (1975, c. 766, s. 1.)

Cross Reference. — As to the effective date of this Chapter, see the Editor's note following the analysis at the beginning of the Chapter.

§ 131A-4. Additional powers. — The Commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

(1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including agreements of sale or lease with, and mortgages and conveyances to, public and nonprofit agencies, persons, firms, corporations, governmental agencies and others;

(2) To acquire by purchase, the exercise of the power of eminent domain but only in connection with a financing for a public agency, lease, gift or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any health care facilities, upon such terms and at such cost as shall be agreed upon by the owner and the Commission;

(3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any health care facilities;

(4) To sell, convey, lease as lessor, mortgage, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(5) To pledge or assign any money, purchase price payments, rents, charges, fees or other revenues and any proceeds derived by the Commission from sales of property, insurance, condemnation awards or other sources;

(6) To pledge or assign the revenues and receipts from any health care facilities and any agreement of sale or lease or the purchase price payments, rent and income received thereunder;

(7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of any health care facilities and to issue revenue refunding bonds;

(8) To finance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any health care facilities and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the Commission for such purpose;

(9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, fees, professional contracts, and charges for the use of, or services rendered by, any health care facilities;

(10) To employ fiscal consultants, consulting engineers, architects, attorneys, health care consultants, appraisers and such other consultants and employees as may be required in the judgment of the Commission and to fix and pay their compensation from funds available to the Commission therefor;

(11) To conduct studies and surveys respecting the need for health care facilities and their location, financing and construction;

(12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to health care facilities from federal and State agencies or instrumentalities and to accept, receive and agree to and comply with the terms and conditions governing payments under any health insurance programs; and

(13) To sue and be sued in its own name, plead and be impleaded.

Any power granted to the Commission under the provisions of this Chapter may be exercised by the executive committee of the Commission when the Commission is not in session, except that the executive committee may not overrule, reverse or disregard any action of the full Commission. The chairman of the Commission may call meetings of the executive committee at any time. (1975, c. 766, s. 1; 1977, c. 267.)

Editor's Note. — The 1977 amendment added the last paragraph of the section.

§ 131A-5. Criteria and requirements. — In undertaking any health care facilities pursuant to this Chapter, the Commission shall be guided by and shall observe the following criteria and requirements; provided that the determination of the Commission as to its compliance with such criteria and requirements shall be final and conclusive:

(1) There is a need for the health care facilities in the area in which the health care facilities are to be located;

(2) No health care facilities shall be sold or leased to any public or nonprofit agency which is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease, to make purchase price payments, to pay rent, to operate, repair and maintain at its own expense the health care facilities and to discharge such other responsibilities as may be imposed under the agreement of sale or lease;

(3) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves therefor and for the operation, repair and maintenance of the health care facilities at the expense of the public or nonprofit agency; and

(4) The public facilities, including utilities, and public services necessary for the health care facilities will be made available. (1975, c. 766, s. 1.)

§ 131A-6. Additional powers of public agencies. — For the purposes of this Chapter, public agencies are authorized and empowered to enter into contracts and agreements, including agreements of sale or lease, with the Commission to facilitate the financing, acquiring, constructing, equipping, providing, operating and maintaining of health care facilities and pursuant to any such agreement of sale or lease to operate, repair and maintain any health care facilities and subject to the provisions of G.S. 131A-8 to pay the cost thereof and the purchase price payments or rent therefor from any funds available for such purposes. (1975, c. 766, s. 1.)

§ 131A-7. Procedural requirements. — In addition to health care facilities initiated by the Commission, any public or nonprofit agency may submit to the Commission, and the Commission may consider, a proposal for financing health care facilities using such forms and following such instructions as may be prescribed by the Commission. Such proposal shall set forth the type and location of the health care facilities and may include other information and data available to the public or nonprofit agency respecting the health care facilities and the extent to which such health care facilities conform to the criteria and requirements set forth in this Chapter. The Commission may request the public or nonprofit agency to provide additional information and data respecting the health care facilities. The Commission is authorized to make or cause to be made such investigations, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the health care facilities, the extent to which the health care facilities will contribute to the health and welfare of the area in which they will be located, the powers, experience, background, financial condition, record of service and capability of the management of the public or nonprofit agency, the extent to which the health care facilities otherwise conform to the criteria and requirements of this Chapter, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this Chapter. (1975, c. 766, s. 1.)

§ 131A-8. Operation of health care facilities; agreements of sale or lease; conveyance of interest in health care facilities. — All health care facilities shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, color or national origin.

The Commission may sell or lease any health care facilities to a public or nonprofit agency for operation and maintenance in such manner as shall effectuate the purposes of this Chapter, under an agreement of sale or lease in form and substance not inconsistent herewith. Any such agreement of sale or lease may include provisions that:

(1) The public or nonprofit agency shall, at its own expense, operate, repair and maintain the health care facilities sold or leased thereunder;

(2) The purchase price payments to be made under the agreement of sale or the rent payable under the agreement of lease shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the Commission to pay the cost of the health care facilities sold or leased thereunder;

(3) The public or nonprofit agency shall pay all other costs incurred by the Commission in connection with the providing of the health care facilities so sold or leased, except such costs as may be paid out of the proceeds of bonds or notes or otherwise, including, but without limitation, insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants and others;

(4) The agreement of sale or lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the Commission in connection with the health care facilities sold or leased thereunder shall be retired or provision for such retirement shall be made; and

(5) The obligation of the public or nonprofit agency to make purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the public or nonprofit agency until the bonds have been retired or provision has been made for such retirement.

All obligations payable by a public agency under an agreement of sale or lease, including the obligation to make purchase price payments or to pay rent and to pay the costs of operating, repairing and maintaining health care facilities, shall be payable solely from the revenues of the health care facilities being purchased or leased or other health care facilities of the public agency and shall not be payable from or charged upon any funds of the public agency other than the revenues pledged to such payment; provided, however, that nothing herein shall restrict the power of any county, city, town or other political subdivision of the State or any hospital district created pursuant to Article 13C of Chapter 131 of the General Statutes to submit to its qualified voters a health care facility maintenance tax under Article 13B of said Chapter 131 for the purposes of financing the cost of operation, equipment and maintenance of any health care facility financed for any public agency under this Chapter and all health care facilities authorized to be financed under this Chapter and leased to public agencies are hereby declared to be included within the definition "hospital facility" as used in said Article 13B.

Where the Commission has acquired a possessory or ownership interest in any health care facilities which it has undertaken on behalf of a public or nonprofit agency it shall promptly convey, without the payment of any consideration, all its right, title and interest in such health care facilities to such public or nonprofit agency upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Commission in connection with such health care facilities. (1975, c. 766, s. 1.)

§ 131A-9. Construction contracts. — Contracts for the construction of any health care facilities on behalf of a public agency shall be awarded by the Commission in accordance with Article 8 of Chapter 143 of the General Statutes. If the Commission shall determine that the purposes of this Chapter will be more effectively served, the Commission in its discretion may award or cause to be awarded contracts for the construction of any health care facilities on behalf of a nonprofit agency upon a negotiated basis as determined by the Commission. The Commission shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The Commission may by written contract engage the services of the public or nonprofit agency in the construction of such health care facilities and may provide in such contract that such public or nonprofit agency, subject to such conditions and requirements consistent with the provisions of this Chapter as shall be prescribed in such contract, may act as an agent of, or an independent contractor for, the Commission for the performance of the functions described therein, including the acquisition of the site and other real property for such health care facilities, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such health care facilities directly by such public or nonprofit agency, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost thereof pending reimbursement by the Commission. Any such contract may provide that the Commission may, out of proceeds of bonds or notes, make advances to or reimburse the public or nonprofit agency for its costs incurred in the performance of such functions, and shall set forth the supporting documents required to be submitted to the Commission and the reviews, examinations and audits that shall be required in connection therewith to assure compliance with the provisions of this Chapter and such contract. (1975, c. 766, s. 1.)

§ 131A-10. Credit of State not pledged. — Bonds or notes issued under the provisions of this Chapter shall not be secured by a pledge of the faith and credit

of the State or of any political subdivision thereof or be deemed to create an indebtedness of the State, or of any such political subdivision thereof, requiring any voter approval, but shall be payable solely from the revenues and other funds provided therefor. Each bond or note issued under this Chapter shall contain on the face thereof a statement to the effect that the Commission shall not be obligated to pay the same nor the interest thereon except from the revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged as security for the payment of the principal of or the interest on such bond or note.

Expenses incurred by the Commission in carrying out the provisions of this Chapter may be made payable from funds provided pursuant to, or made available for use under, this Chapter and no liability shall be incurred by the Commission hereunder beyond the extent to which moneys shall have been so provided. (1975, c. 766, s. 1.)

§ 131A-11. Bonds and notes. — The Commission is hereby authorized to provide for the issuance, at one time or from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the Commission to carry out and effectuate its corporate purposes. The principal of and the interest on such bonds or notes shall be payable solely from funds provided under this Chapter for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or other funds provided therefor. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Commission at such price or prices and upon such terms and conditions as may be determined by the Commission. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Commission. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Commission. The Commission shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Commission may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. No bonds or notes may be issued by the Commission under this Chapter unless the issuance thereof is approved by the Local Government Commission of North Carolina.

The Commission shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of such bonds or notes which shall contain such information and have attached to it such documents concerning the proposed financing and prospective vendee or lessee as the Secretary may require.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, in addition to the criteria and requirements mentioned in G.S. 131A-5, the effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of such bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will effectuate the purposes of this Chapter.

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

The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the Commission may provide in the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes.

Prior to the preparation of definitive bonds, the Commission may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds, when such bonds shall have been executed and are available for delivery. The Commission may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

Bonds or notes may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes. (1975, c. 766, s. 1.)

§ 131A-12. Trust agreement or resolution. — In the discretion of the Commission any bonds or notes issued under the provisions of this Chapter may be secured by a trust agreement by and between the Commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution authorizing the issuance of such bonds or notes may pledge or assign all or any part of the revenues of the Commission received pursuant to this Chapter, including, without limitation, fees, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any health care facilities and may mortgage any health care facilities. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to the purposes to which bond or note proceeds may be applied, the disposition or pledging of the revenues of the Commission, the duties of the Commission with respect to the acquisition, construction, maintenance, repair and operation of any health care facilities, the fees, purchase price payments, rents and charges to be fixed and collected in connection therewith, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding and application of all moneys. All bonds issued under this Chapter shall be equally and ratably secured by a pledge, charge, and lien upon revenues

provided for in such trust agreement or resolution, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this Chapter and of such trust agreement or resolution; except that the Commission may provide in such trust agreement or resolution that bonds issued pursuant thereto shall to the extent and in the manner prescribed in such trust agreement or resolution be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other bonds. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or notes, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Commission. Any such trust agreement or resolution may set forth the rights and remedies, including foreclosure of any mortgage, of the holders of any bonds or notes and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Commission may deem reasonable and proper for the security of the holders of any bonds or notes. Expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of any health care facilities or paid from the revenues pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the Commission. (1975, c. 766, s. 1.)

§ 131A-13. Revenues; pledges of revenues. — (a) The Commission is hereby authorized to fix and to collect fees, purchase price payments, rents and charges for the use of any health care facilities, and any part or section thereof, and to contract with any public or nonprofit agency for the use thereof. The Commission may require that the public or nonprofit agency shall operate, repair or maintain such facilities and shall bear the cost thereof and other costs of the Commission in connection therewith, subject to the provisions of G.S. 131A-8 with respect to a public agency, as may be provided in the agreement of sale or lease or other contract with the Commission, in addition to other obligations imposed under such agreement or contract.

(b) The fees, purchase price payments, rents and charges shall be fixed so as to provide a fund sufficient, with such other funds as may be made available therefor, (i) to pay the costs of operating, repairing and maintaining the health care facilities, to the extent that adequate provision for the payment of such costs has not otherwise been provided for, (ii) to pay the principal of and the interest on all bonds or notes as the same shall become due and payable and (iii) to create and maintain any reserves provided for in the resolution authorizing the issuance of, or any trust agreement securing, such bonds; and such fees, purchase price payments, rents and charges may be applied or pledged to the payment of debt service on the bonds prior to the payment of the costs of operating, repairing and maintaining the health care facilities.

(c) All pledges of fees, purchase price payments, rents, charges and other revenues under the provisions of this Chapter shall be valid and binding from the time when such pledges are made. All such revenues so pledged and thereafter received by the Commission shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Commission, irrespective of whether such parties have notice thereof. The resolution or any trust agreement by which a pledge is created or any agreement of sale or lease need not be filed or recorded except in the records of the Commission.

(d) The State of North Carolina does pledge to and agree with the holders of any bonds or notes issued by the Commission that so long as any of such bonds or notes are outstanding and unpaid the State will not limit or alter the rights

vested in the Commission at the time of issuance of the bonds or notes to fix, revise, charge, and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, fees and charges for the use of or services rendered by any health care facilities in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with such other funds as may be made available therefor, to pay the costs of operating, repairing and maintaining the health care facilities, to pay the principal of and the interest on all bonds and notes as the same shall become due and payable and to create and maintain any reserves provided therefor and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged. (1975, c. 766, s. 1.)

§ 131A-14. Trust funds. — Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter, including, without limitation, fees, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any health care facilities, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this Chapter, subject to such regulations as this Chapter and such resolution or trust agreement may provide. Any such moneys may be invested as provided in G.S. 159-30, as it may be amended from time to time. (1975, c. 766, s. 1.)

§ 131A-15. Remedies. — Any holder of bonds or notes issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Commission pursuant to this Chapter, and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution to be performed by the Commission or by any officer thereof. (1975, c. 766, s. 1.)

§ 131A-16. Negotiable instruments. — All bonds and interest coupons appertaining thereto issued under this Chapter are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, whether or not they are of such form and character as to be investment securities under said Article 8, subject only to the provisions of the bonds pertaining to registration. (1975, c. 766, s. 1.)

§ 131A-17. Bonds or notes eligible for investment. — Bonds or notes issued under the provisions of this Chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging

to them. Such bonds or notes are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law. (1975, c. 766, s. 1.)

§ 131A-18. Refunding bonds or notes. — The Commission is hereby authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds or notes and, if deemed advisable by the Commission, for any corporate purpose of the Commission, including, without limitation:

(1) Constructing improvements, additions, extensions or enlargements of the health care facilities in connection with which the bonds or notes to be refunded shall have been issued, and

(2) Paying all or any part of the cost of any additional health care facilities.

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

Refunding bonds or notes may be sold or exchanged for outstanding bonds or notes issued under this Chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such refunding bonds or notes, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in the resolution authorizing the issuance of, or in the trust agreement securing, such bonds or notes, to the payment of any interest on such refunding bonds or notes and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1975, c. 766, s. 1.)

§ 131A-19. Annual report. — The Commission shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Chapter for the preceding year to the Governor, the State Auditor, the Secretary of Human Resources, the General Assembly, the Advisory Budget Commission and the Local Government Commission. The Commission shall cause an audit of its books and accounts relating to its activities under this Chapter to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Commission. (1975, c. 766, s. 1.)

§ 131A-20. Officers not liable. — No member or officer of the Commission shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance thereof. (1975, c. 766, s. 1.)

§ 131A-21. Tax exemption. — The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and welfare, and no tax or assessment shall be levied upon

any health care facilities undertaken by the Commission prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Commission in connection with such health care facilities.

Any bonds or notes issued by the Commission under the provisions of this Chapter, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1975, c. 766, s. 1.)

§ 131A-22. Conflict of interest. — If any member, officer or employee of the Commission shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the Commission, such interest shall be disclosed to the Commission and shall be set forth in the minutes of the Commission, and the member, officer or employee having such interest therein shall not participate on behalf of the Commission in the authorization of any such contract. (1975, c. 766, s. 1.)

Purchase of Revenue Bonds by Commission Members. — Although this section does not prohibit purchase by Commission members of revenue bonds issued by the Commission, it is recommended that Commission members refrain from such purchases to avoid the appearance of impropriety and possible criminal penalty under § 14-234. See opinion of Attorney General to Mr. I.O. Wilkerson, Department of Human Resources, 46 N.C.A.G. 219 (1977).

§ 131A-23. Additional method. — The foregoing sections of this Chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1975, c. 766, s. 1.)

§ 131A-24. Liberal construction. — This Chapter, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof. (1975, c. 766, s. 1.)

§ 131A-25. Inconsistent laws inapplicable. — Insofar as the provisions of this Chapter are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this Chapter shall be controlling. (1975, c. 766, s. 1.)

Chapter 132.

Public Records.

§ 132-1. "Public records" defined. — "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government. (1935, c. 265, s. 1; 1975, c. 787, s. 1.)

Applications for Licensure as Speech and Language Pathologists and Audiologists Are Public Records. — See opinion of Attorney General to Mariana Newton, Phd., Chairman, Board of Examiners for Speech and Language Pathologists and Audiologists, 45 N.C.A.G. 188 (1976).

Editor's Note. — The 1975 amendment rewrote this section.

Municipal Records and Papers, Such as Budgets, Bank Statements, Tax Levies, Utility Accounts, Minutes of Meetings, etc., Are Public Records. — See opinion of Attorney General to Honorable R.L. Davis, 43 N.C.A.G. 274 (1973).

Sheriff's department investigative reports and memoranda concerning investigation of crimes are not public records within the sense of Chapter 132 of the General Statutes and are not thereby subject to public inspection. Opinion of Attorney General to Honorable J. Hubert Haynes, 44 N.C.A.G. 340 (1975).

§ 132-1.1. Confidential communications by legal counsel to public board or agency; not public records. — Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body. (1975, c. 662.)

§ 132-3. Destruction of records regulated.

Applied in State v. West, 31 N.C. App. 431, 229 S.E.2d 826 (1976).

§ 132-4. Disposition of records at end of official's term. — Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the Department of Cultural Resources, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of 10 days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a misdemeanor and upon conviction imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars ($1,000) or both. (1935, c. 265, s. 4; 1943, c. 237; 1973, c. 476, s. 48; 1975, c. 696, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars ($1,000) or both" for "fined not exceeding five hundred dollars ($500.00)" at the end of the section.

§ 132-5. Demanding custody. — Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for 10 days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a misdemeanor and upon conviction imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars ($1,000) or both. (1935, c. 265, s. 5; 1975, c. 696, s. 2.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars ($1,000) or both" for "fined not exceeding five hundred dollars ($500.00)" at the end of the section.

§ 132-5.1. Regaining custody; civil remedies. — (a) The Secretary of the Department of Cultural Resources or his designated representative or any public official who is the custodian of public records which are in the possession of a person or agency not authorized by the custodian or by law to possess such public records may petition the Superior Court in the county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such public records. The court may order such public records to be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the petitioner may request that the court enforce such order through its contempt power and procedures.

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

(1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or

(2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 787, s. 2.)

Public records and documents are the property of the State and not of the individual who happens, at the moment, to have them in his possession; and when they are deposited in the place designated for them by law, there they must remain, and can be removed only under authority of an act of the legislature and in the manner and for the purpose designated by law. State v. West, 31 N.C. App. 431, 229 S.E.2d 826 (1976).

Since ownership of bills of indictment is in the State, it cannot be disposed of except as provided by law. It cannot be forfeited through the oversight, carelessness or even intentional conduct of any of the agents of the State. Thus, the documents in question left the custody of the court in an unlawful manner and legal title thereto cannot pass to the individual who happens, at the moment, to have them in his possession. State v. West, 31 N.C. App. 431, 229 S.E.2d 826 (1976).

§ 132-9. Access to records. — Any person who is denied access to public records for purposes of inspection, examination or copying may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders. (1935, c. 265, s. 9; 1975, c. 787, s. 3.)

Editor's Note. — The 1975 amendment rewrote this section.

Chapter 133.

Public Works.

ARTICLE 1.

General Provisions.

§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited. — It shall be unlawful for any architect, engineer, or other individual, firm, or corporation providing design services for any city, county or State work supported wholly or in part with public funds, knowingly to specify any building materials, equipment or other items which are manufactured, sold or distributed by any firm or corporation in which such designer or specifier has a financial interest by reason of being a partner, officer, employee, agent or substantial stockholder. (1933, c. 66, s. 1; 1977, c. 730.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section.

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

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

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

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

Chapter 89 of the General Statutes, referred to in this section, has been recodified as Chapter 89A.

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

Applied in Barrett v. Craven County Bd. of Educ., 70 F.R.D. 466 (E.D.N.C. 1976).

§ 133-4. Violation of Chapter made misdemeanor.

Violation a Crime. — This section makes the violation of the provisions of Chapter 133, and the provisions of Chapter 83, and its rules and regulations by incorporation by reference, a crime calling for specific punishment. Barrett v. Craven County Bd. of Educ., 70 F.R.D. 466 (E.D.N.C. 1976).

ARTICLE 2.

Relocation Assistance.

§ 133-5. Short title.

Relocation Assistance Act Held Constitutional. — See Quick v. City of Charlotte, 21 N.C. App. 401, 204 S.E.2d 533, cert. denied, 285 N.C. 590, 205 S.E.2d 723 (1974).

§ 133-6. Declaration of purpose.

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

§ 133-7. Definitions.

The definition of "displaced person" does not unconstitutionally discriminate against persons who are forced to move from real property before January 1, 1972, by denying to them but granting to others who moved from the property "on or after January 1, 1972," assistance under the various provisions of the Relocation Assistance Act. Quick v. City of Charlotte, 21 N.C. App. 401, 204 S.E.2d 533, cert. denied, 285 N.C. 590, 205 S.E.2d 723 (1974).

§ 133-8. Moving and related expenses.

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

§ 133-9. Replacement housing for homeowners.

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

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

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

§ 133-10.1. Authorization for replacement housing. — If subject to the "additional payment" limitation specified in G.S. 133-9(a) with respect to each person displaced from a dwelling actually owned and occupied by him a program or project cannot proceed to actual construction because of the lack of availability of comparable sale or rental housing, the Department of Transportation, upon a determination that such housing cannot otherwise be made available, may

(1) Undertake through private contractors, after competitive bidding, to provide for the construction and renovation of the necessary housing,

(2) Purchase sites and improvements after publishing in a newspaper of general circulation in the county in which such sites are located a public notice of the proposed transaction, including a description of the sites and improvements to be purchased, the owner or owners thereof, the terms of the transaction including the price and date of the proposed purchase, and a brief description of the factors upon which the agency has based its determination that such housing is not otherwise available, and

(3) Sell or lease the premises to the displaced person upon such terms as the agency deems necessary. (1975, c. 515.)

§ 133-11. Relocation assistance advisory services.

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

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

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

§ 133-14. Regulations and procedures. — The agency is authorized to adopt such rules and regulations as it deems necessary and appropriate to carry out the provisions of this Article. The agency is authorized and empowered to adopt all or any part of applicable federal rules and regulations which are necessary or desirable to implement this Article. Such rules and regulations shall include, but not be limited to, provisions relating to:

(1) Payments authorized by this Article to assure that such payments shall be fair and reasonable and as uniform as possible on those projects to which this Article is applicable;

(2) Prompt payment after a move to displaced persons who make proper application and are entitled to payment, or, in hardship cases, payment in advance;

(3) Moving expense and allowances as provided for in G.S. 133-8;

(4) Standards for decent, safe and sanitary dwelling;

(5) Eligibility of displaced persons for relocation assistance payments, the procedure for such persons to claim such payments, and the amounts thereof;

(6) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the agency head or its administrative officer;

(7) Projects or classes of projects on which payments as herein provided will be made. (1971, c. 1107, s. 1; 1973, c. 1446, s. 8.)

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

Chapter 134.

Youth Development.

§§ 134-1 to 134-39: Recodified as §§ 134A-1 to 134A-39, effective July 1, 1975.

Editor's Note. — This Chapter was rewritten by Session Laws 1975, c. 742, effective July 1, 1975, and has been recodified as Chapter 134A.

Chapter 134A.

Youth Services.

Editor's Note. — This Chapter is Chapter 134 as rewritten by Session Laws 1975, c. 742, effective July 1, 1975, and recodified. Where appropriate, the historical citation to the sections of the former Chapter have been added to corresponding sections of the new Chapter.

Session Laws 1975, c. 742, s. 5, provides: "The Commission of Youth Services shall adopt rules and regulations related to the conduct, supervision, rights and privileges of persons in its custody or under its supervision. Such rules and regulations shall be filed with and published by the office of the Attorney General and shall be made available by the Commission for public inspection. The rules and regulations shall include a description of the organization of the Commission. A description or copy of all forms and instructions used by the Commission, except those relating solely to matters of internal management, shall also be filed with the office of the Attorney General. No rule or regulation shall be held invalid because of failure to file such rule or regulation."

Article 1.

Division of Youth Services in the Department of Human Resources.

§ 134A-1. Legislative intent and purpose. — The General Assembly hereby declares its intent and legislative policy to separate the administration of training schools for committed delinquents from the adult corrections system to

avoid the stigma and punitive philosophy associated with penal facilities for convicted adult offenders. It is further intended that institutional programs for delinquents provide appropriate treatment and care according to the needs of the children in care and that such programs be appropriately coordinated with other services for children within the Department of Human Resources. (1975, c. 742, s. 1.)

§ 134A-2. Definitions. — The following terms or phrases shall be defined as follows in this Chapter unless the context or subject matter otherwise requires:

(1) "Child" is any person who has not reached his sixteenth birthday.
(2) Repealed by Session Laws 1977, c. 627, s. 3.
(3) "County detention home" means one of the existing county-supported detention homes for juveniles or one which may be established by a county or other unit of local government in the future.
(4) "Delinquent child" includes any child subject to the juvenile jurisdiction of the district court as defined by G.S. 7A-278(2) who is subject to commitment to an institution for delinquents under G.S. 7A-286.
(5) "Department" means the Department of Human Resources as defined under Chapter 143B, the Executive Organization Act of 1973.
(6) Repealed by Session Laws 1977, c. 627, s. 3.
(7) "Holdover facility" means a place in a local jail approved by the Department of Human Resources for detention of a child for not more than five calendar days prior to placement in an approved detention home.
(8) "Institution" means a school, training school or institution for committed delinquents heretofore operated by the Division of Youth Development of the Department of Correction, namely the following: Stonewall Jackson School; Samarkand Manor School; Dobb's School for Girls; Richard T. Fountain School; Cameron Morrison School; C. A. Dillon School; Juvenile Evaluation Center.
(9) "Juvenile detention" refers to detention of a child alleged to be undisciplined or delinquent before or after a juvenile hearing as authorized by G.S. 7A-286(3).
(10) "Regional detention home" means a State-supported and administered regional facility providing detention care as recommended by the report.
(11) "Report" means the Report of the National Juvenile Detention Association entitled Juvenile Detention in North Carolina: A Study Report, released in January 1973.
(12) "Secretary" means the Secretary of Human Resources established by G.S. 143B-139.
(13) "Youth services program" means any type of residential or nonresidential program or service for youth that may be developed by the Secretary as authorized by this Chapter. (1975, c. 742, s. 1; 1977, c. 627, ss. 3, 4.)

Editor's Note. — The 1977 amendment deleted subdivisions (2), defining "Commission," and (6), defining "Director," and substituted "Secretary" for "Commission" in subdivision (13).

§§ 134A-3 to 134A-5: Repealed by Session Laws 1977, c. 627, s. 5.

§ 134A-6. Transfer of institutions. — All institutions previously operated by the Division of Youth Development of the Department of Correction and the present central office of said Division of Youth Development (including land, buildings, equipment, supplies, personnel, or other properties rented or

controlled for youth development purposes) are hereby transferred to the Department of Human Resources which shall administer such institutions and programs as provided by this Chapter. (1975, c. 742, s. 1.)

§ 134A-7: Repealed by Session Laws 1977, c. 627, s. 5.

§ 134A-8. Powers and duties of Secretary of Human Resources. — The Secretary shall have the following powers and duties:

(1) To give leadership to the implementation as appropriate of State policy which requires that training schools be phased out as populations diminish;

(2) To close a State training school when its operation is no longer justified and to transfer State funds appropriated for the operation of any training school which is closed to fund community-based programs or to purchase care or services for pre-delinquents, delinquents or status offenders in community-based or other appropriate programs or to improve the efficiency of existing training schools, provided such actions are approved by the Advisory Budget Commission;

(3) To develop a sound admission or intake program to youth services institutions, including the requirement of a careful evaluation of the needs of each child prior to acceptance and placement;

(4) To assure quality programs in youth services institutions or youth services programs which shall be designed to meet the needs of children in care or receiving services;

(5) To provide a quality educational program in each training school, including vocational education which is realistic in relation to available jobs, and to administer this educational system with the advice of the Youth Services Advisory Committee;

(6) To have all other powers of a secretary in relation to a division of youth services or youth services institutions or youth services programs as provided by the Executive Organization Act of 1973 as amended and codified in Chapter 143B or as provided by any other appropriate State law. (1977, c. 627, s. 6.)

§ 134A-9: Reserved for future codification purposes.

ARTICLE 2.

Director of Youth Services.

§§ 134A-10 to 134A-14: Repealed by Session Laws 1977, c. 627, s. 7.

§§ 134A-15 to 134A-17: Reserved for future codification purposes.

ARTICLE 3.

Commitment and Care.

§ 134A-18. Commitment. — The Department shall accept all children who have been committed for delinquency under G.S. 7A-286, provided the Secretary or his staff finds that the statutory criteria specified in G.S. 7A-286(5) have been complied with. A court order of commitment accompanied by other appropriate social, medical, psychological or other appropriate information as may be

required by the Secretary shall be forwarded to the Department which shall determine which institution or youth services program would best provide for the needs of the child so committed and advise the committing court. The Department shall have the authority to assign a child committed for delinquency as herein provided to any institution or other program of the Department or licensed by the Department which is appropriate to the needs of the child. (1947, c. 226; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1; 1977, c. 627, s. 8.)

Editor's Note. — The 1977 amendment substituted "Secretary" for "Director" in the first sentence and "required by the Secretary" for "specified by the rules and regulations of the Commission" in the second sentence, and deleted "under rules and regulations of the Commission" at the end of the third sentence.

§ 134A-19. Responsibility of committing court. — After study of the commitment order and accompanying information concerning the needs of the child, the Department shall notify the committing court which institution or other youth services program is appropriate according to the needs of the child. The committing court shall deliver the child to the place designated by the Department and shall pay all transportation expenses. If the delinquent committed to the Department is a female, she must be accompanied by a female approved by the committing court to the institution or other place designated by the Department. (1975, c. 742, s. 1.)

§ 134A-20. Program. — The Department shall provide such programs in its institutions or other youth services programs as will implement the right of any committed child to appropriate treatment according to his needs including but not limited to the following programs or services: educational; clinical and psychological; psychiatric; social; medical; medical; vocational, recreational; and others as identified as appropriate by the Secretary. (1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1; 1977, c. 627, s. 9.)

Editor's Note. — The 1977 amendment deleted "under the guidance of the Commission" following "The Department" at the beginning of the section and substituted "Secretary" for "Commission" at the end of the section.

§ 134A-21. Authority to provide necessary medical or surgical care. — The Department is authorized to provide such medical and surgical treatment as is necessary to preserve the life and health of students while in care, provided that no surgical operation may be performed except as authorized in G.S. 130-191. (1965, c. 1024; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-22. Compensation to children in care. — Children who have been committed to the Department may be compensated for work or participation in training programs at rates approved by the Secretary within available funds. The Department is authorized to accept grants or funds from any source to compensate children as provided under this section. (1971, c. 933; 1973, c. 1262, s. 10; 1975, c. 742, s. 1; 1977, c. 627, s. 10.)

Editor's Note. — The 1977 amendment substituted "Secretary" for "Commission" near the end of the first sentence and deleted "and under rules and regulations adopted by the Commission" at the end of the first sentence.

§ 134A-23. Legal effect of commitment. — An adjudication that a child is delinquent as defined by G.S. 7A-278(2) or commitment of a delinquent child to the Department shall not disqualify the child for public office nor be considered

conviction of any criminal offense nor imprisonment for crime nor cause the child to forfeit any citizenship rights. In the case of any youth whose case was transferred from the district court division to the superior court division for trial as an adult as provided by G.S. 7A-280 and who was convicted of a felony and committed to the Department of Correction, all citizenship rights forfeited as a result of such conviction shall be automatically restored to such youth upon the youth's final discharge under rules and regulations of the Department of Correction, and the Secretary of Correction is authorized to issue a certificate to this effect. (1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-24. Runaways. — If a child runs away from the institution or youth services program to which he is assigned, the administrative head of such program shall cause the child to be apprehended and returned. Any employee of the institution or youth services program or of the Department or any peace officer may apprehend and return the child without a warrant or court order. (1947, c. 226; 1971, c. 1169; 1973, c. 476, s. 138; 1975, c. 742, s. 1.)

§ 134A-25. Criminal offense to aid escapes. — It shall be unlawful for any person to aid, harbor, conceal or assist any child to escape from an institution or youth services program. Any person who renders said assistance to a child shall be guilty of a misdemeanor. (1947, c. 226; 1971, c. 1169; 1975, c. 742, s. 1.)

§ 134A-26. Visits and community activities. — The Department shall encourage visits by parents and responsible relatives of children in care. The Department shall also arrange a suitable program of home visits for children in care. (1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1; 1977, c. 627, s. 11.)

Editor's Note. — The 1977 amendment deleted "under rules and regulations of the Commission" at the end of the first and second sentences.

§ 134A-27. Transfer authority of Governor. — The Governor may order transfer of any person less than 18 years of age from any jail or other penal facility of the State to one of the institutions in appropriate circumstances, provided the Governor shall consult with the Department concerning the feasibility of such transfer in terms of available space, staff, and suitability of program. (1947, c. 226; 1971, c. 1169; 1975, c. 742, s. 1.)

§ 134A-28. Clinical chaplains for persons committed to training schools. — The Department of Human Resources is authorized and directed to employ clinical chaplains to provide moral, religious and social counseling to boys and girls committed to the training schools of the Division of Human Resources. The Department of Human Resources shall seek to employ a diversity of qualified persons having differing faiths which are to the extent practical reflective of the proffessed religious composition of the student population of the Youth Services' training schools. (1977, c. 949, s. 1.)

Editor's Note. — Session Laws 1977, c. 949, s. 2, makes this section effective July 1, 1977.

§ 134A-29: Reserved for future codification purposes.

ARTICLE 4.

Prerelease and Release.

§ 134A-30. Authority to release. — The Department shall have the duty to know about the progress of children in its care and to know when a child is ready for release. The Department may release any child at any time after receiving the child in care based on the Department's evaluation of the needs of the child and the best interests of the State. (1975, c. 742, s. 1; 1977, c. 627, s. 12.)

Editor's Note. — The 1977 amendment deleted "under the rules and regulations of the Commission" at the end of the section.

§ 134A-31. Prerelease planning. — The Department shall be responsible for regular evaluation of the progress of each child at least once every six months as long as the child remains in the care of the Department. If the Department determines that a child is ready for release, the Department shall initiate a prerelease planning process with the parents and the committing court. This prerelease planning process shall include the following:

(1) Written notice to the committing court and the parents that the child is ready for release, including an explanation of the reasons and the date of the anticipated release;

(2) A prerelease planning conference involving as many of the appropriate people as possible, including the child, his parents, staff of the committing court (or the staff of the court that will provide aftercare supervision), and staff of the institution or program that found the child ready for release;

(3) Planning for an orderly transition from the institution or youth services program to the child's home or the community to which the child is returning, including arrangements for the court counselor to become involved in supervision as soon as the child leaves the institution. (1975, c. 742, s. 1; 1977, c. 627, s. 13.)

Editor's Note. — The 1977 amendment deleted "be defined by rules and regulations of the Commission, but the process shall" preceding "include" in the third sentence of the introductory language of the section.

§ 134A-32. Conditional release and final discharge. — The Department may release a child by conditional release or final discharge. The decision as to which type of release is appropriate shall be made by the Department based on the needs of the child and the best interests of the State according to the following guidelines:

(1) Conditional release is appropriate for children needing supervision after leaving the institution; in such case, the conditions of conditional release shall be designed by the Department in the prerelease planning process specified in G.S. 134A-31 and provided in writing to the child, his parents and the court staff which will provide aftercare supervision.

(2) Final discharge is appropriate when the child does not seem to require supervision or is 18 years of age. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1; 1977, c. 627, s. 14.)

Editor's Note. — The 1977 amendment deleted "under rules and regulations governing release which shall be approved by the Commission" following "State" in the second sentence.

§ 134A-33. Revocation of conditional release. — If a child who was released on conditional release does not conform to the conditions of said conditional release, the court counselor providing aftercare supervision or the appropriate staff of the Department may make a motion for review in the district court in the district where the child has been residing during such aftercare supervision. The district court shall hold a juvenile hearing to determine whether there has been such a violation. If the court determines that the child has violated the terms of his conditional release, the court may revoke such conditional release or make any other disposition authorized by G.S. 7A-286 which the court determines to be in the best interest of the child. If the court revokes the conditional release, the court staff shall make arrangements with the Department for the return of the child. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1; 1977, c. 627, s. 15.)

Editor's Note. — The 1977 amendment deleted "under rules and regulations approved by the Commission" at the end of the section.

§§ 134A-34, 134A-35: Reserved for future codification purposes.

ARTICLE 5.

Detention Services.

§ 134A-36. Legislative intent. — The General Assembly intends to provide an administrative structure for implementation of the study of detention needs in North Carolina done by the National Juvenile Detention Association entitled Juvenile Detention in North Carolina: A Study Report, released in January, 1973. In addition to the authority of the Department under Part 3, Article 3, Chapter 108 and Article 10, Chapter 153A, the Department shall be responsible for the development and administration of regional detention homes as recommended in the report and for coordination of regional detention services through existing county detention homes. (1973, c. 1230, s. 1; c. 1262, s. 10; 1975, c. 742, s. 1.)

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

(1) The Department shall plan with the counties operating a county detention home to provide regional juvenile detention services to surrounding counties as recommended by said report, except that the Department shall have some discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate variable factors.

(2) The Department shall plan for and administer five or more regional detention homes as recommended in said report, including careful planning on location, architectural design, construction, and administration of a program to meet the needs of children in juvenile detention care. Both the physical facility and the program of a regional detention home shall comply with State standards. (1973, c. 1230, s. 1; 1975, c. 742, s. 1.)

§ 134A-38. State subsidy to county detention homes. — The Department shall develop a State subsidy program to pay a county detention home which provides regional juvenile detention services and meets State standards a certain portion of its operating costs and its per capita daily cost per child for any child cared for from another county as recommended in said report. In general, this subsidy should be fifty percent (50%) of the operating costs of a county detention home and one hundred percent (100%) of the per capita daily cost of caring for a child from another county; any county placing a child in the county detention home of another county providing regional juvenile detention services or a regional detention home should pay fifty percent (50%) of the per capita daily cost of caring for the child to the Department. The exact funding formulas may be varied by the Department to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care. (1973, c. 1230, s. 1; 1975, c. 742, s. 1.)

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

(1) To develop rules and regulations which may be necessary to fulfill its responsibilities under this Article;

(2) To plan with counties operating county detention homes to provide regional services and to upgrade physical facilities as recommended in said report, to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards;

(3) To develop one or more pilot programs to demonstrate quality juvenile detention care on a regional basis that meet State standards;

(4) To develop a plan whereby law-enforcement officers or other appropriate employees of local government shall be reimbursed by the State for the costs of transportation of a child to and from any juvenile detention facility;

(5) To seek funding for juvenile detention services from federal sources, and to accept gifts of funds from public or private sources; and

(6) To transfer State funds appropriated for institutions or other youth services programs to develop a pilot program of juvenile detention care, to purchase detention care in a county detention home which meets State standards, and to operate a regional detention home. (1973, c. 1230, s. 1; 1975, c. 742, s. 1; 1977, c. 627, s. 16.)

Editor's Note. — The 1977 amendment deleted "which shall be effective when approved by the Commission" at the end of subdivision (1).

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

Article 1.

Retirement System for Teachers and State Employees.

§ 135-1. Definitions. — The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

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

(10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include any person who is a member of the Uniform Judicial Retirement System, any member or officer of the General Assembly or any part-time or temporary employee. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee" shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held

by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard: Provided, further, that the Adjutant General, in his discretion, may terminate the Retirement System coverage of the above-described national guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the national guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a national guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if he had been a member during the years of ineligibility, plus interest. "Employee" shall also mean any full-time employee of the North Carolina Symphony Society, Inc., and of the North Carolina Art Society, Inc.

(11) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid. "Employer" shall also mean the North Carolina Symphony Society, Inc., and the North Carolina Art Society, Inc.

(1973, c. 1233; 1975, c. 457, s. 1; 1977, c. 574, s. 1.)

Cross Reference. — For the Retirement Systems Actuarial Note Act, see § 120-112 et seq.

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

The 1975 amendment, effective July 1, 1975, substituted "four" for "five" near the middle of subdivision (5).

The 1977 amendment added "and of the North Carolina Art Society, Inc." to the end of subdivision (10) and "and the North Carolina Art Society, Inc." to the end of subdivision (11).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (5), (10) and (11) are set out.

Session Laws 1977, c. 574, s. 2, provides: "The Retirement System coverage for employees of the North Carolina Art Society, Inc., provided in Section 1 of this act is conditional upon payment by the North Carolina Art Society, Inc., of all of the employer's contributions or matching funds from funds of the said society, other than funds from the State of North Carolina, and on the said society'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. Any retroactive coverage of the employees of the North Carolina Art Society, Inc., for service prior to the effective date of this act may be affected only to the extent that the said society pays all of the employer's contributions or matching funds necessary for such purpose and provided the said society 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."

§ 135-3. Membership. — The membership of this Retirement System shall be composed as follows:

(1) All persons who shall become teachers or State employees after the date as of which the Retirement System is established. On and after July 1, 1947, membership in the Retirement System shall begin 90 days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this Chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a "teacher or employee," as the terms are defined in this Chapter. Provided, that every person who is employed by the State as a State highway patrolman or other law-enforcement officer as defined in G.S. 143-166(m) shall automatically become a member of the Teachers' and State Employees' Retirement System unless such person shall, within 15 days after his employment, become a member of the Law-Enforcement Officers' Benefit and Retirement Fund, in which event such person shall not be entitled to membership in the Teachers' and State Employees' Retirement System; provided, that any such State employee who joins said fund and is later transferred to a position other than one described in G.S. 143-166(m) shall be enrolled in the Teachers' and State Employees' Retirement System and in addition thereto be entitled to transfer to this Retirement System his contributions in lump sum and credits for membership and prior service standing to his credit in the Law-Enforcement Officers' Benefit and Retirement Fund. Upon request for transfer of such credits, the State's employer contributions shall also be paid to the Teachers' and State Employees' Retirement System by the executive secretary of the Law-Enforcement Officers' Benefit and Retirement Fund: Provided, further, any State employee who was formerly a member of the Law-Enforcement Officers' Benefit and Retirement Fund and transferred to nonlaw-enforcement State employment within the same department prior to May 26, 1961, and withdrew his contributions from the Law-Enforcement Officers' Benefit and Retirement Fund at a time when the above transfer of contributions and credits was not authorized by statute, and who has been continuously a member of the Teachers' and State Employees' Retirement System since such transfer to nonlaw-enforcement State employment with the same department, may pay to the Teachers' and State Employees' Retirement System in a lump sum the amount of such withdrawn contributions plus interest and, thereupon, shall be entitled to the same membership and prior service credits as if such contributions had never been withdrawn. This right shall apply retroactively in the case of any member who heretofore has transferred to nonlaw-enforcement duties. Under such rules and regulations as the Board of Trustees may establish and promulgate, Cooperative Agricultural Extension Service employees may in the discretion of the governing authority of a county, become members of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county. On and after July 1, 1965, new extension service employees in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation

derived from a county; provided that on and after July 1, 1965, new extension service employees who are required to accept a federal civil service appointment may elect in writing, on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the Local Retirement System.

(8) The provisions of this subdivision (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967 or whose account is active on July 1, 1967, or has not withdrawn his contributions, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b1); provided that such benefits will be computed in accordance with (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with (b3) on or after July 1, 1969. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested.

b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth

at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

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

c. The provisions of paragraphs d and e of the preceding subdivision (7) shall apply equally to this subdivision (8).

(9) Members who are participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 may retain their membership status and receive all benefits provided by this Chapter during the period of the exchange provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall, notwithstanding whether he and his employer are making contributions to the member's account during the exchange period, be entitled to the death benefit if he otherwise qualifies under the provisions of this Article and provided further that no duplicate benefits shall be paid. (1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 9½; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2; 1965, c. 780, s. 1; c. 1187; 1967, c. 720, ss. 1, 2, 15; c. 1234; 1969, c. 1223, ss. 1, 2, 14; 1971, c. 117, ss. 6-8; c. 118, ss. 1, 2; 1973, c. 241, s. 1; c. 994, s. 5; c. 1363; 1977, c. 783, s. 3.)

Editor's Note.—

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

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

As the rest of the section was not changed by the amendments, only the opening paragraph and subdivisions (1), (8) and (9) are set out.

The 1977 amendment added subdivision (9).

Session Laws 1977, c. 783, s. 5, contains a severability clause.

§ 135-4. Creditable service. — (a) Under such rules and regulations as the Board of Trustees shall adopt, each member who was a teacher or State employee at any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946, shall file a detailed statement of all North Carolina service as a teacher or State employee rendered by him prior to the date of establishment for which he claims credit; provided, that, notwithstanding the foregoing, any member retiring on or after July 1, 1965, with credit for not less than 10 years of membership service shall file such detailed statement of service as a teacher or State employee rendered by him prior to July 1, 1941, for which he claims credit; provided, that any member who retired on a service retirement allowance prior to July 1, 1965,

who at the time of his retirement did not qualify for credit for his service as a teacher or State employee prior to July 1, 1941, may request on and after July 1, 1971, that his original benefit be recalculated, in accordance with the formula prevailing at the time of his retirement, to include credit for such service with the new benefit to become effective on the first of the month following certification of the prior service; provided, that any person who is a member of the Teachers' and State Employees' Retirement System on July 1, 1974, and who was previously employed by a participating unit of the North Carolina Local Governmental Employees' Retirement System and who terminated his service with such unit prior to its participation in the North Carolina Local Governmental Employees' Retirement System shall file a detailed statement of all service to such political entity. Certification of such service shall be furnished to the Teachers' and State Employees' Retirement System.

(f) Armed Service Credit.—

(1) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and prior to February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from such armed services under other than dishonorable conditions shall be entitled to full credit for all prior service.

(2) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952, or who devote not less than 10 years of service to the State after they are separated or released from such armed services under other than dishonorable conditions, shall be entitled to full credit for all prior service, and, in addition they shall receive membership service credit for the period of service in such armed services up to the date they were first eligible to be separated or released therefrom, occurring after the date of establishment of the Retirement System.

(3) Teachers and other State employees who enter the armed services of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after they are first eligible to be separated or released from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the armed services.

(4) Under such rules as the Board of Trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he would have been paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the Board of Trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of G.S. 135-8, the Board of Trustees shall refund to or reimburse such member for such payments.

(5) The provisions of this subsection shall also apply to members of the national guard with respect to teachers and State employees who are

called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the national guard.

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

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

(l) Notwithstanding any other provision of this Chapter, any member may, upon completion of 10 years of current membership service, purchase credit for service previously rendered to any state, territory or other governmental subdivision of the United States other than this State at the rate of one year of out-of-state service for each two years of service in this State with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time

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

Notwithstanding the foregoing provisions, any member may, upon completion of 10 years of current membership service, purchase Federal School, Overseas Dependent Schools, or Military Dependent Schools service, or, while on an approved leave of absence from employment with the State of North Carolina, foreign service in the International Cooperation Administration or the Agency for International Development upon the same terms as in the preceding paragraph for out-of-state service.

(m) Wherever the terminology "out-of-state service," is used in this section, that terminology shall be interpreted to include the United States Public Health Service and time spent in the Merchant Marines while in the United States Naval Reserve. (1941, c. 25, s. 4; 1943, cc. 200, 783; 1945, c. 797; 1947, c. 575; 1949, c. 1056, ss. 2, 4; 1953, c. 1050, s. 3; 1959, c. 513, s. 1½; 1961, c. 516, s. 3; c. 779, s. 2; 1963, c. 1262; 1965, c. 780, s. 1; c. 924; 1967, c. 720, s. 3; 1969, c. 1223, ss. 3, 4; 1971, c. 117, ss. 9, 10; c. 993; 1973, c. 241, s. 2; c. 242, s. 1; c. 667, s. 2; c. 737, s. 1; c. 816, s. 1; c. 1063; c. 1311, ss. 1-5; 1975, c. 205, s. 2; c. 875, s. 47; 1977, c. 317; c. 790.)

Editor's Note. —

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

The seventh 1973 amendment, effective July 1, 1974, added subdivision (6) to subsection (f) and added subsections (k), (l) and (m).

The 1975 amendment, effective July 1, 1975, inserted "or the rules and regulations of the Law-Enforcement Officers' Benefit and Retirement Fund" in the first sentence of subsection (k).

The second 1975 amendment, effective July 1, 1975, repealed former subsection (m), relating to payment of the employer portion of the annual cost to fund the provisions of subsections (f)(6), (k) and (l).

The first 1977 amendment, effective July 1, 1977, added the second paragraph of subsection (l).

The second 1977 amendment added present subsection (m).

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

§ 135-5. Benefits.

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1975. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1975, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(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).

(b5) Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1975, but prior to July 1, 1977, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(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).

(b6) Service Retirement Allowances of Members Retiring on or after July 1, 1977. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(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).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1971, a member shall receive a service retirement

allowance if he has attained the age of 65 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

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

(2) Notwithstanding the foregoing provisions,

a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 135-5(d2);

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

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

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed.

Option 1. (a) In the Case of a Member Who Retires prior to July 1, 1963. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate

by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit. A member who makes an election in accordance with this option shall be deemed to have made a further election of Option 1 above.

Option 5. The member may elect:

(1) To receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

(2) To receive a reduced retirement allowance during his life with provision for some other benefit to be paid after his death in accordance with a plan submitted to and approved by the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

(l) Death Benefit. — Upon receipt of proof, satisfactory to the Board of Trustees, of the death, in service, of a member who had completed at least one full calendar year of membership in the System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his death occurs, or

(3) If the member had applied for and was entitled to receive a disability retirement allowance and such disability retirement allowance had not been discontinued or revoked within 366 days of his last date of actual service, the compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his last day of actual service occurred;

subject to a maximum of twenty thousand dollars ($20,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions on his death pursuant to the provisions of subsection (f) of this G.S. 135-5. For the purposes of this subsection (l), a member shall be deemed to be in service at the date of his death if his last day of actual service occurred not more than 90 days before the date of his death or if his last day of actual service occurred not more than 366 days before the date of his death if such member during said one-year period had applied for and was entitled to receive a disability retirement allowance, provided said disability retirement allowance had not been discontinued or revoked during said one-year period.

The death benefit provided in this subsection (l) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

(1) After December 31, 1968 and after he has attained age 70; or
(2) After December 31, 1969 and after he has attained age 69; or
(3) After December 31, 1970 and after he has attained age 68; or
(4) After December 31, 1971 and after he has attained age 67; or
(5) After December 31, 1972 and after he has attained age 66; or
(6) After December 31, 1973 and after he has attained age 65.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, after attaining age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this subsection in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate reserve fund under the Retirement System for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate reserve fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the reserve fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
(2) Last day of actual service shall be:
    a. When employment has been terminated, the last day the member actually worked.
    b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).
(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).
(4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars ($20,000).

(s) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963,

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

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

(u) Repealed by Session Laws 1975, c. 875, s. 47, effective July 1, 1975.

(v) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 135-5(o) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System unless the 1975 Session of the General Assembly provides an appropriation to fund this provision.

(x) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1976, which shall become payable on July 1, 1977, and to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the years beginning July 1, 1977, and July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(z) Increases in benefits paid in respect to members retired prior to July 1, 1975. From and after July 1, 1977, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1975, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly retirement allowances as of July 1, 1977, have been increased to the extent provided for in the preceding subsection (o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a

beneficiary. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3; 1975, c. 457, ss. 2-4; c. 511, ss. 1, 2; c. 634, ss. 1, 2; c. 875, s. 47; 1977, c. 561; c. 802, ss. 50.65-50.70.)

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

Editor's Note.—

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

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

The first 1975 amendment, effective July 1, 1975, added "but prior to July 1, 1975" in the catchline and in the introductory language in subsection (b4), and added subsection (b5), Option 6 in subsection (g), and subsection (v).

The second 1975 amendment added subdivision (3) in the first paragraph of subsection (l) and added the language beginning "or if his last day" at the end of the last sentence of the first paragraph of subsection (l).

The third 1975 amendment, effective July 1, 1975, added subsections (w) and (x).

The fourth 1975 amendment, effective July 1, 1975, repealed subsection (u), relating to payment of the employer portion of the annual cost to fund the provisions of subsections (s) and (t).

The first 1977 amendment added the present third paragraph of subsection (l).

The second 1977 amendment, effective July 1, 1977, rewrote the introductory paragraph of subsection (b5) so as to limit its application to members retiring before July 1, 1977, added subsections (b6), (y) and (z), and substituted "twenty thousand dollars ($20,000)" for "fifteen thousand dollars ($15,000)" at the end of the second sentence in the first paragraph of subsection (l) and at the end of subdivision (4) in the last paragraph of subsection (l).

Session Laws 1975, c. 511, s. 3, provides: "This act shall become effective upon ratification but shall apply only to members of the Retirement System whose deaths occur after said ratification." The act was ratified June 10, 1975.

Session Laws 1975, c. 634, s. 3, provides: "Notwithstanding any other provisions of Chapters 1311 and 1312 of the 1973 Session Laws, the total annual cost to the employer of the benefits provided in these Chapters shall be funded from July 1, 1975, to July 1, 1977, by an appropriate adjustment in the years required to fund the accrued liability of the system unless the 1975 Session of the General Assembly funds these Chapters for the years beginning July 1, 1975, and July 1, 1976."

Session Laws 1977, c. 802, s. 53, contains a severability clause.

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

The provisions of subdivision (a)(2) take precedence over the authority of the State Personnel Commission to make rules governing age. See opinion of Attorney General to Mr. Nathan H. Yelton, Office of Aging, Department of Human Resources, 46 N.C.A.G. 216 (1977).

The State Personnel Commission may not require employees subject to the State Personnel Act to retire at the end of the calendar month in which they reach age 65. See opinion of Attorney General to Mr. Nathan H. Yelton, Assistant Secretary, Office of Aging, Department of Human Resources, 46 N.C.A.G. 192 (1977).

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

(b) Elections to participate in the optional retirement program shall be made as follows:

(1) An election to participate in the optional retirement program shall be irrevocable. An eligible employee failing to elect to participate in the optional retirement program within the period prescribed in this section shall automatically remain a member of the Retirement System.

(2) Eligible employees initially appointed on or after the effective date of the adoption of the optional retirement program, shall at the time of entering upon his employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to

participate in the optional retirement program established pursuant to this section. Such election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into service.

(3) Each eligible employee initially appointed prior to the effective date of the adoption of the optional retirement program, may, within one year from the date of adoption, elect to participate in the optional retirement program. Such election shall be in writing and filed with the Retirement System and with the employing institution and shall become effective on the first day of the second month next following the date of such election and shall constitute a notice of termination of membership in said Retirement System and a request for withdrawal of his accumulated contributions, with regular interest, from the annuity savings fund, thereby waiving all rights and benefits provided by said Retirement System. No matching State funds shall be transferred from the Retirement System.

(4) No election by an eligible employee of the optional retirement program shall be effective unless it shall be accompanied by an appropriate application for the issuance of a contract or contracts under the program.

(5) If any participant, having less than five years' coverage under the optional retirement program, leaves the employ of the participating institution and either retires or commences employment with an employer not having a retirement program with the same company, his contract shall, on his request, be repurchased and the value of the accumulation attributable to the participating institution's contribution shall be refunded to the participating institution and forthwith paid by it to the Retirement System and credited to the pension accumulation fund.

(c) Each employing institution shall contribute on behalf of each participant in such optional retirement program an amount equal to the amount which the employee would be required to contribute to the Retirement System as a member of said Retirement System as specified in G.S. 135-8(b)(1). Each participant shall contribute the amount which he would be required to contribute if he were a member of said Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant may be made by payroll deduction or salary reduction according to rules and regulations established by each participating board. Additional personal contributions may also be made by a participant in a like manner. Payment of contributions shall be made by the employing institution to the designated company or companies for the benefit of each participant and such employer contributions shall not be subject to any State tax.

(1973, c. 1425; 1977, c. 1070.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, rewrote the first sentence of subsection (c).

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

The 1977 amendment inserted "value of the accumulation attributable to the" near the middle of subdivision (5) of subsection (b).

§ 135-5.2. Chapel Hill utilities and telephone employees. — Notwithstanding any other provision to the contrary, all persons employed by Chapel Hill Telephone Company or University Service Plants at the time the Chapel Hill telephone services and utilities services are sold to the Southern Bell Company and Duke Power Company respectively, shall be entitled to retire upon

early retirement after 30 years of combined service with the Teachers' and State Employees' Retirement System and either Southern Bell or Duke Power Company. An employee must have had at least five years' service with the Teacher's and State Employees' Retirement System and at least five years with either Southern Bell or Duke Power Company in order to be eligible for benefits under this provision. This provision is in addition to any other retirement benefits or privileges the employee may have under the Teachers' and State Employees' Retirement System. (1977, c. 1007.)

§ 135-6. Administration.

(b) Membership of Board; Terms. — The Board shall consist of 13 members, as follows:

(1) The State Treasurer, ex officio;

(2) The Superintendent of Public Instruction, ex officio;

(3) Nine members to be appointed by the Governor and confirmed by the Senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the State; one of the appointive members shall be an employee of the Board of Transportation, who shall be appointed by the Governor for a term of four years commencing April 1, 1947, and quadrennially thereafter; one of the appointive members shall be a representative of higher education appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one of the appointive members shall be a retired teacher who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one shall be a retired State employee who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1977, and quadrennially thereafter; one to be a general State employee, and three who are not members of the teaching profession or State employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years. At the expiration of these terms of office the appointment shall be for a term of four years;

(4) Two members, one a member of the House of Representatives, appointed by the Speaker of the House; and one a member of the Senate, appointed by the President of the Senate, neither of which shall be an active or retired teacher or State employee or an employee of a unit of local government to serve terms beginning on April 3, 1974, and to continue for the duration of their current terms of office. Thereafter, their successors shall be appointed for two-year terms to run concurrently with the organization of the General Assembly.

(1973, c. 1114; 1977, c. 564.)

Editor's Note. —

The third 1973 amendment substituted "12" for "10" near the beginning of subsection (b) and added subdivision (4) to subsection (b).

The 1977 amendment, effective July 1, 1977, in subsection (b), substituted "13 members" for "12 members" in the introductory language, and in subdivision (3), substituted "Nine members" for "Eight members" in the first sentence, deleted "or State employee" following "retired teacher" and inserted "one shall be a retired State employee who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1977, and quadrennially thereafter" near the middle of the second sentence.

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

§ 135-8. Method of financing.

(b) Annuity Savings Fund. — The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to

provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

(1) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his actual compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State, from salaries other than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five per centum (5%) of actual compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of Article 2 of Chapter 135 of Volume 3B of the General Statutes, as amended, and with respect to members covered under G.S. 135-27, with such coverage retroactive to January 1, 1955, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the Board of Trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the Board of Trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955, and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under Article 2, Chapter 135 of Volume 3B of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required.

Notwithstanding the foregoing, effective July 1, 1963, with respect to the period of service commencing on July 1, 1963, and ending December 31, 1965, the rates of such deduction shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars ($4,800) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars ($4,800); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deductions shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars ($5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars ($5,600); and with respect to the period of service commencing July 1, 1967, and ending June 30, 1975, the rate of such deductions shall be five per centum (5%) of the portion of compensation not in excess of fifty-six hundred dollars ($5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars ($5,600). Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

Notwithstanding the foregoing, effective July 1, 1975, with respect to the period of service commencing on July 1, 1975, the rate of such deductions shall be six per centum (6%) of the compensation received

by any member. 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 compensation that the State of North Carolina pays and shall transmit same to the State Retirement System monthly: Provided, that for the purpose of enabling the boards of education to make such payment, the tax-levying authorities are hereby authorized, empowered and directed to provide the necessary funds therefor. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this Chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.

(4) In addition to contributions deducted from compensation as hereinbefore provided, subject to the approval of the Board of Trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom, as provided in this Chapter. Such amounts so redeposited shall become a part of his accumulated contributions as if such amounts had initially been contributed within the calendar year of such redeposit. In no event, however, shall any member be permitted to redeposit any amount withdrawn after July 1, 1959, except as provided for in G.S. 135-4(e).

(5) Subject to the approval of the Board of Trustees, any member who is granted by his employer a leave of absence for the sole purpose of acquiring knowledge, talents, or abilities which are, in the opinion of the employer, expected to increase the efficiency of the services of the

member to his or her employer, may make monthly contributions to the Retirement System on the basis of the salary or wage such member was receiving at the time such leave of absence was granted. And, in such cases where the member unsuccessfully petitioned for official leave of absence, and did have interrupted State employment without withdrawal of Retirement System contributions, and did complete an educational program which in the opinion of the Board of Trustees increased his efficiency upon return to State employment, and where the interrupted State employment was only of such duration and for the sole purpose of completing said education, the employee returned to State employment at the first opportunity not to exceed four years from the date he resigned for the purpose of completing said education, that after resuming State employment and full participation in the Retirement System for not less than 10 consecutive years or age 65 he or she be permitted to purchase credit for said period of absence from State employment for a period of time not to exceed four years only by a lump sum payment based on the employee's compensation rate at the time of his or her separation from State employment, and that said lump sum payment shall be equal to the full cost of providing such credit including the employer portion of the funding cost plus interest and a fee to cover handling of the adjustment which fee shall be determined by the board of trustees.

(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.

(f) Collection of Contributions.

(1) The collection of members' contributions shall be as follows:

a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the Retirement System the contributions payable by such member as provided in this Chapter, and the employer shall draw his warrant for the amount so deducted, payable to the Teachers' and State Employees' Retirement System of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.

(2) The collection of employers' contributions shall be made as follows:

a. Upon the basis of each actuarial valuation provided herein there shall be prepared biennially and certified to the Department of Administration a statement of the total amount necessary for the ensuing biennium to the pension accumulation and expense funds, as provided under subsections (d) and (f) of this section, and these funds shall be handled and disbursed in accordance with Chapter 100, Public Laws of 1929, and amendments thereto (G.S. 143-1 et seq.), known as the Executive Budget Act.

b. Until the first valuation has been made and the rates computed as provided in subsection (d) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths percent (5.51%) of the payroll of all teachers and three and sixteen one-hundredths percent (3.16%) for other State employees.

c. The auditor shall issue his warrant to the State Treasurer directing the State Treasurer to pay this sum to the Board of Trustees, from the appropriations for the Teachers' and State Employees' Retirement System.

d. Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina shall pay the Board of Trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.

e. Each employer shall transmit monthly to the State Retirement System on account of each employee, who is a member of this System, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month.

(3) If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer other than the State shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer from any funds of the State shall be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default.

(1975, c. 457, s. 5; c. 879, s. 46; 1977, c. 909.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, inserted "and ending June 30, 1975," near the end of the first sentence of the second paragraph of subdivision (b)(1) and added the third paragraph of subdivision (b)(1).

The second 1975 amendment, effective July 1, 1975, deleted "the budget division of" preceding "the Department of Administration" in paragraph (2)a of subsection (f).

The 1977 amendment, effective July 1, 1977, added the second sentence to subdivision (b)(5). The amendatory act referred to "G.S. 135-8 . . . paragraph (5)," but subdivision (5) of subsection (b) was plainly intended.

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

Article 2.

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

§ 135-20. Definitions.

Local Modification. — Village of Pinehurst: 1977, c. 245.

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

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

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

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

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

ARTICLE 3.

Other Teacher, Employee Benefits.

§ 135-33. Hospital and medical insurance. — The Board of Trustees of the Retirement System shall formulate, establish and administer for teachers and State employees a program of hospital and medical care benefits to the extent that funds for such benefits are specifically appropriated by the General Assembly. Such a program may be provided by the Board either directly or through the purchase of contracts therefor, or any combination thereof, as in its discretion it may deem wise and expedient. In awarding any contracts pursuant to this section, the Board shall give consideration to the total or overall cost of complete family coverage by teachers and State employees. Notwithstanding any provisions of this section to the contrary any member who was vested at the time of retirement, his surviving spouse, and the surviving spouse of a teacher or State employee who is receiving a survivor's alternate benefit under G.S. 135-5(m), may obtain or continue the same hospital and medical care insurance and benefits for himself and/or dependents available to active teachers and State employees until they become ineligible for such insurance or benefits due to reasons other than retirement, provided such member or dependents or surviving spouse agrees to and pays by a deducation from retirement benefits or by other appropriate method an amount not greater than the cost of such benefits for active teachers and State employees. And provided further the Board of Trustees shall offer any members who were vested at the time of retirement, their spouses or surviving spouses, and the surviving spouses of teachers and State employees who are receiving a survivor's alternate benefit under G.S. 135-5(m), who are eligible for Medicare a plan of supplemental insurance designed to provide them with medical and hospital insurance benefits comparable to the benefits offered active teachers and State employees, if such member or surviving spouse agrees to and pays by a deduction from retirement benefits or other appropriate method the cost of such benefits. (1971, c. 1009, s. 1; 1973, c. 746; c. 1278, s. 1; 1975, c. 754, s. 1; 1977, c. 24.)

Editor's Note. —

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

The 1975 amendment, substituted the language beginning "the same hospital and medical care insurance" for "coverage for himself and dependents provided he pays the established applicable premium for the plan or plans of insurance as determined by the Board of Trustees of the Teachers' and State Employees' Retirement System based on acturarial experience" at the end of the fourth sentence. The amendment also added the fifth sentence.

The 1977 amendment, effective May 1, 1977, inserted "his surviving spouse, and the surviving spouse of a teacher or State employee who is receiving a survivor's alternate benefit under G.S. 135-5(m)" near the beginning of the fourth sentence and "or surviving spouse" near the end of that sentence, and inserted "and the surviving spouses of teachers and State employees who are receiving a survivor's alternate benefit under G.S. 135-5(m)" in the fifth sentence.

Session Laws 1975, c. 754, s. 2, provides: "The provisions of this act relating to hospital and medical care insurance benefits shall become

effective October 1, 1975, and the provisions of this act relating to a plan of supplemental insurance for Medicare shall become effective January 1, 1976."

§ 135-33.1. General Assembly medical and hospital care benefit plan. — The Board of Trustees of the Retirement System shall formulate, establish and administer for members of the General Assembly, their spouses and dependents a program of hospital and medical care benefits similar to the program provided for teachers and State employees which shall be paid for solely by contributions of the beneficiaries of such program. Any former member of the General Assembly or his surviving spouse may obtain or continue the same hospital and medical care benefits program for themselves and their dependents until they become ineligible for such benefits according to the rules of ineligibility of the program administered for teachers and State employees, provided that the beneficiaries of such benefits pay the cost of such program. The board of trustees shall further offer any members or former members of the General Assembly, their spouses or surviving spouses who are eligible for Medicare a plan of supplemental insurance designed to provide them with medical and hospital insurance benefits similar to the benefits offered active teachers and State employees, provided the beneficiaries pay the cost of such insurance. (1977, c. 631, s. 1.)

Editor's Note. — Session Laws 1977, c. 631, s. 2, makes this section effective Oct. 1, 1977.

§ 135-34. Disability salary continuation. — The Board of Trustees of the Retirement System shall formulate, establish and administer for teachers and State employees with one or more years of service a program of disability salary continuation benefits to the extent that funds for such benefits are specifically appropriated by the General Assembly. Such a program may be provided by the Board either directly or through the purchase of contracts therefor, or any combination thereof, as in its discretion it may deem wise and expedient. Benefits provided under this program of disability salary continuation shall not be reduced in any manner as a result of social security payments received with respect to any dependent or dependents of the disabled employee or as a result of compensation received from the Veterans Administration of the United States for disease or disability incurred while a member of the armed forces of the United States. (1971, c. 1009, s. 1; 1973, c. 746; c. 1278, s. 2.)

Editor's Note. —
The second 1973 amendment, effective July 1, 1974, added the third sentence.

§ 135-36. Membership in Retirement System not necessary. — The fact that a teacher or State employee is not a member of the Teachers' and State Employees' Retirement System does not affect his right to benefits provided under this Article, with the exception of school bus drivers in the public school system and temporary and part-time employees, who are specifically excluded; provided that persons employed on a permanent part-time basis designated as half-time or more may obtain for themselves and their dependents the benefits established in G.S. 135-33, as amended, by the payment of the entire premium for the persons so covered. (1971, c. 1009, s. 1; 1973, c. 1278, s. 3.)

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

ARTICLE 4.

Uniform Judicial Retirement Act of 1973.

§ 135-56. Creditable service. — (a) Subject to such rules and regulations as the Board of Trustees shall adopt with regard to the verification of a member's prior service, the prior service of a member shall consist of his service rendered prior to January 1, 1974, as a justice of the Supreme Court, judge of the Court of Appeals, judge of the superior court, judge of the district court division of the General Court of Justice, as administrative officer of the courts, or as a solicitor or district attorney.
(1973, c. 640, s. 1; 1977, c. 936.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, in subsection (a), deleted "or" preceding "as administrative officer" and added "or as a solicitor or district attorney" to the end.

As only subsection (a) was changed by the amendment, subsection (b) was not set out.

§ 135-56.1. Creditable service for district court judges. — Creditable service for a judge of a district court of the General Court of Justice shall include, in addition to time served as a district court judge or district attorney (prosecuting attorney or solicitor) or both, time served as a judge of any lawfully constituted court of this State inferior to the superior court, excluding time served as a justice of the peace, as a magistrate, or as a mayor's court judge; provided that such person was a contributing member of a participating unit of the North Carolina Local Governmental Employee's Retirement System prior to becoming a district court judge; and provided further that such member's contributions were transferred to the State Retirement System at the time he became a district court judge and such contributions have not been withdrawn. (1977, c. 1120, s. 1.)

Editor's Note. — Session Laws 1977, c. 1120, s. 4, makes this section effective July 1, 1977.

§ 135-58. Service retirement benefits. — (a) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 after he either has attained his sixty-fifth birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2) and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which he is entitled under the Teachers' and State Employees' Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three fourths of his final compensation:

(1) Four percent (4%) of his final compensation, multiplied by the number of years of his creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and one-half percent (3½%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;

(3) In addition to time served as a District Court Judge of the General Court of Justice, creditable service shall also include prior creditable service as provided in G.S. 135-56.

(1977, c. 1120, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote subdivision (3) of subsection (a). As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 135-63. Benefits on death before retirement.

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

(1973, c. 1385.)

Editor's Note. — The 1973 amendment, effective Jan. 1, 1974, substituted "forty-ninth" for "fiftieth" in the first sentence of subsection (b). As only subsection (b) was changed by the amendment, the rest of the section is not set out.

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

ARTICLE 4A.

Uniform Solicitorial Retirement Act of 1974.

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

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

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

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

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

§§ 135-79 to 135-83: Reserved for future codification purposes.

ARTICLE 4B.

Uniform Clerks of Superior Court Retirement Act of 1975.

§ 135-84. Short title and purpose. — (a) This Article shall be known and may be cited as the "Uniform Clerks of Superior Court Retirement Act of 1975."

(b) The purpose of this Article is to improve the administration of justice by attracting the most highly qualified talent available within the State to the position of clerk of superior court. (1975, c. 956, s. 17.)

Editor's Note. — Session Laws 1975, c. 956, s. 20, makes the act effective July 1, 1975.

§ 135-85. Scope. — (a) This Article provides uniform retirement benefits for all clerks of superior court of the General Court of Justice who were so serving on January 1, 1975, or who become such thereafter.

(b) The Board of Trustees of the Teachers' and State Employees' Retirement System shall administer the provisions of this Article. Provisions of Article 4 of Chapter 135 of the General Statutes shall apply to clerks of superior court and their spouses to the same extent that they apply to a judge of the district court division of the General Court of Justice including, but not limited to, benefits, entitlements, and amounts of contributions to the Retirement System. (1975, c. 956, s. 17.)

Chapter 136.

Roads and Highways.

Article 1.

Organization of Department of Transportation.

Article 2.

Powers and Duties of Department and Board of Transportation.

Article 2A.

State Roads Generally.

Article 11A.

Exemption and Deferment from Removal of Certain Directional Signs, Displays, and Devices.

Article 12.

Junkyard Control Act.

ARTICLE 1.

Organization of Department of Transportation.

§ 136-4. State Highway Administrator. — There shall be a State Highway Administrator, who shall be a career official and who shall be the administrative officer of the Department of Transportation for highway matters. The State Highway Administrator shall be appointed by the Secretary of Transportation and he may be removed at any time by the Secretary of Transportation. He shall be paid a salary fixed by the Secretary of Transportation subject to the approval of the Advisory Budget Commission. The State Highway Administrator shall have such powers and perform such duties as the Secretary of Transportation shall prescribe. (1921, c. 2, ss. 5, 6; C. S., s. 3846(g); 1933, c. 172, s. 17; 1957, c. 65, s. 2; 1961, c. 232, s. 2; 1965, c. 55, s. 3; 1973, c. 507, s. 22; 1975, c. 716, s. 7; 1977, c. 464, s. 11.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the end of the first sentence.

The 1977 amendment, effective July 1, 1977, substituted "Secretary of Transportation" for "Board of Transportation" throughout the section.

§ 136-10. Annual audits; report of audit to General Assembly. — The books and accounts of the Department of Transportation shall be audited at least once a year by the State Auditor, or by a certified public accountant designated by the State Auditor. The audit shall be of a business type, and shall follow generally accepted auditing practices and procedures. The audit report shall be made a part of the report of the Department of Transportation required under the provisions of G.S. 136-12. The cost of the audit shall be borne by the State Highway Fund. (1921, c. 2, s. 24; C. S., s. 3846(m); 1933, c. 172, s. 17; 1957, c. 65, s. 4; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-11. Annual reports to Governor. — The Department of Transportation shall make to the Department of Administration, or to the Governor, a full report of its finances and the physical condition of buildings, depots and properties under its supervision and control, on the first day of July of each year, and at

such other times as the Governor or Directors of the Budget may call for the same. (1933, c. 172, s. 11; 1957, c. 65, s. 11; c. 269, s. 1; c. 349, s. 7; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

Pursuant to Session Laws 1957, ch. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau." See § 143-344(a).

§ 136-12. Reports to General Assembly. — The Department of Transportation shall, on or before the tenth day after the convening of each regular session of the General Assembly of North Carolina, make a full printed, detailed report to the General Assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the Department of Transportation, and such other data as may be of interest in connection with the work of the Department of Transportation. A full account of each road project shall be kept by and under the direction of the Department of Transportation or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request. (1921, c. 2, s. 23; C. S., s. 3846(l); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-13. Malfeasance of officers, employees, members of the Department of Transportation, contractors, and others. — (a) It is unlawful for any person, firm, or corporation to directly or indirectly corruptly give, offer, or promise anything of value to any officer or employee of the Department of Transportation or member of the Department of Transportation, or to promise any officer, employee, or member of the Department of Transportation to give anything of value to any other person with intent:

(1) To influence any official act of any officer or employee of the Department of Transportation or member of the Department of Transportation;

(2) To influence such member of the Department of Transportation, or any officer or employee of the Department of Transportation to commit or aid in committing, or collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and

(3) To induce a member of the Department of Transportation, or any officer or employee of the Department of Transportation to do or omit to do any act in violation of his lawful duty.

(b) It shall be unlawful for any member of the Department of Transportation, or any officer or employee of the Department of Transportation, directly or indirectly, to corruptly ask, demand, exact, solicit, accept, receive, or agree to receive anything of value for himself or any other person or entity in return for:

(1) Being influenced in his performance of any official act;

(2) Being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and

(3) Being induced to do or omit to do any act in violation of his official duty.

(c) The violation of any of the provisions of this section shall be cause for forfeiture of public office and shall be a felony punishable by a fine of not more than twenty thousand dollars ($20,000) or three times the monetary equivalent of the thing of value, whichever is greater, or imprisonment of not more than 10 years, or both such fine and imprisonment. (1921, c. 2, s. 49; C. S., s. 3846(cc); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1965, c. 55, s. 7; 1973, c. 507, s. 6; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10, 10.1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" throughout subdivisions (a) and (b).

The 1977 amendment, effective July 1, 1977, deleted references to the Secondary Roads Council in subsections (a) and (b); substituted "Department of Transportation" for "Board of Transportation" in two places near the end of the introductory paragraph of subsection (a), at the end of subdivision (1) of subsection (a), near the beginning of subdivisions (2) and (3) of subsection (a) and near the beginning of subsection (b).

§ 136-13.1. Use of position to influence elections or political action. — No member of the Department of Transportation nor any officer or employee of the Department of Transportation shall be permitted to use his position to influence elections or the political action of any person. (1965, c. 55, s. 8; 1973, c. 507, s. 7; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10.1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" preceding "shall be permitted."

The 1977 amendment, effective July 1, 1977, deleted "Secondary Roads Council," following "member of the" and substituted "Department of Transportation" for "Board of Transportation" near the beginning of the section.

§ 136-14. Members not eligible to other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position. — No member of the Department of Transportation shall be eligible to any other employment in connection with the Department of Transportation, and no member of the Department of Transportation or any salaried employee thereof, shall furnish or sell any supplies or materials, directly or indirectly, to the Department of Transportation, nor shall any member of the Department of Transportation, directly or indirectly, engage in any transaction involving the sale of or trading of real or personal property with the Department of Transportation, or profit in any manner by reason of his official action or his official position, except to receive such salary, fees and allowances as by law provided. Violation of this section shall be a felony punishable by fine of not more than twenty thousand dollars ($20,000), or three times the value of the transaction, or by both fine and imprisonment. (1933, c. 172, s. 10; 1957, c. 65, s. 11; 1965, c. 55, s. 9; 1973, c. 507, s. 8; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10.2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in three places.

The 1977 amendment, effective July 1, 1977, deleted references to the Secondary Roads Council in the first sentence and substituted "member of the Department of Transportation" for "member of the Board of Transportation" in three places.

§ 136-14.1. Highway engineering divisions. — For purposes of administering the highway activities, the Department of Transportation shall have authority to designate boundaries of highway engineering divisions for the proper administration of its duties. (1957, c. 65, s. 5; 1965, c. 55, s. 10; 1973, c. 507, s. 9; 1975, c. 716, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the middle of the section.

§ 136-14.2. Division engineer to manage personnel. — Except for general departmental policy applicable to all of the State the division engineer shall have authority over all divisional personnel matters and over Department employees in his division making personnel decisions. (1975, 2nd Sess., c. 983, s. 92.)

Editor's Note. — Session Laws 1975, 2nd Sess., c. 983, s. 152, makes this section effective July 1, 1976.

§ 136-15. Establishment of administrative districts. — The Department of Transportation may establish such administrative districts as in its opinion shall be necessary for the proper and efficient performance of highway duties. The Department may from time to time change the number of such districts, or it may change the territory embraced within the several districts, when in its opinion it is in the interest of efficiency and economy to make such change. (1931, c. 145, s. 5; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 10; 1975, c. 716, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the beginning of the first sentence.

§ 136-16. Funds and property converted to State Highway Fund. — Except as otherwise provided, all funds and property collected by the Department of Transportation shall be paid or converted into the State Highway Fund. (1919, c. 189, s. 8; C. S., s. 3595; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

ARTICLE 2.

Powers and Duties of Department and Board of Transportation.

§ 136-17.1: Repealed by Session Laws 1977, c. 464, s. 13, effective July 1, 1977.

§ 136-18. Powers of Department of Transportation. — The said Department of Transportation shall be vested with the following powers:

(1) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of materials to be used in the construction of State highways under the authority of this Chapter.

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

(3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, 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 Department of Transportation, 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 Department of Transportation, thereafter the Department of Transportation 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 Department of Transportation.

(4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.

(5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Department of Transportation shall constitute a misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Department of Transportation may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

(6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The Department of Transportation shall have authority to maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.

(8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.

(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. No such roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes and every use or attempted use of any such area for commercial purposes shall constitute a misdemeanor and each day's use shall constitute a separate offense.

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph or other poles, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any wise interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, or other poles, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a misdemeanor.

(11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation

shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.

(12) The Department of Transportation shall have such powers as are necessary to comply fully with the provisions of the present or future federal aid acts. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000).

(13) The Department of Transportation is authorized and empowered to construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(14) The Department of Transportation shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(15) The Department of Transportation shall have authority to provide facilities for the use of waterborne traffic by establishing connections between the highway system and the navigable waters of the State by means of connecting roads and piers.

(16) The Department of Transportation, pursuant to a resolution of the Board of Transportation, shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of

existing rights-of-way or the clearing of obstructions that, in the opinion of the Department of Transportation, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

(18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless such signs have first been approved by the Department of Transportation.

(20) The Department of Transportation 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 Department of Transportation is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.

(22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation is authorized and empowered to regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between highways and airways and the Department of Transportation is authorized and empowered to make rules, regulations, and ordinances for the preservation of safe

clearances between highways and airways. The Department of Transportation shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a misdemeanor punishable in the discretion of the court; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

(23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be effected thereby, the Department of Transportation shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.

(24) The Department of Transportation is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The Department of Transportation is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the above-mentioned institutions, the Department of Transportation shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly.

(26) The Department of Transportation, at the request of a representative from a board of county commissioners, is hereby authorized to acquire by condemnation new or additional right-of-way to construct, pave or otherwise improve a designated State-maintained secondary road upon

presentation by said board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of such request by a majority of its members and by the further presentation of a petition requesting such improvement executed by the abutting owners whose frontage on said secondary road shall equal or exceed seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C. S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, s. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; c. 780.)

Editor's Note. —

The first 1977 amendment, effective July 1, 1977, inserted "as determined by the Board of Transportation" in subdivision (8), substituted "The Department of Transportation, pursuant to a resolution of the Board of Transportation," for "The Board of Transportation" at the beginning of subdivision (16), and substituted "Department of Transportation" for "Board of Transportation" throughout the rest of the section.

The second 1977 amendment added subdivision (26).

Session Laws 1977, c. 460, s. 2, added by Session Laws 1977, c. 780, s. 1, provides: "This act shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain."

The Department of Transportation has the statutory authority to determine the nature and extent of the property required for its purposes. Frink v. North Carolina Bd. of Transp., 27 N.C. App. 207, 218 S.E.2d 713 (1975).

Value of land condemned under subdivision (16). — See North Carolina State Hwy. Comm'n v. Helderman, 285 N.C. 645, 207 S.E.2d 720 (1974).

§ 136-18.1. Use of Bermuda grass. — The use of Bermuda grass shall be restricted to sections of the highway where the abutting property is not in cultivation, except where the Department of Transportation has written consent of the abutting landowner. In long sections of woodland or wasteland sufficiently distant from cultivated areas, Bermuda grass may be used. The Department of Transportation and its employees shall use every reasonable effort to eliminate Bermuda grass heretofore planted on the shoulders of the highways through cultivated farm areas. (1945, c. 992; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-18.2. Seed planted by Department of Transportation to be approved by Department of Agriculture. — The Department of Transportation shall not cause any seed to be planted on or along any highway or road right-of-way unless and until such seed has been approved by the State Department of Agriculture as provided for in the rules and regulations of the Department of Agriculture for such seed. (1957, c. 1002; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

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

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

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

(d) Whenever any municipality or county fails to comply with the rules and regulations promulgated by the Department of Transportation or whenever they fail or refuse to comply with any order of the Department of Transportation for the removal or change in the location of a container, then the permit of such county or municipality shall be revoked. The location of such garbage containers on highway rights-of-way after such order for removal or change is unauthorized and illegal; the Department of Transportation shall have the authority to remove such unauthorized or illegal containers and charge the expense of such removal to the county or municipality failing to comply with the order of the Department of Transportation. (1973, c. 1381; 1977, c. 464, s. 7.1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-18.4. Provision and marking of "pull-off" areas. — The Department of Transportation is hereby authorized and directed (i) to provide as needed within its right-of-way, adjacent to long sections of two-lane primary highway having a steep uphill grade or numerous curves, areas on which buses, trucks and other slow-moving vehicles can pull over so that faster moving traffic may proceed unimpeded and (ii) to erect appropriate and adequate signs along such sections of highway and at the pull-off areas. A driver of a truck, bus, or other slow-moving vehicle who fails to use an area so provided and thereby impedes faster moving traffic following his vehicle shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days or both. (1975, c. 704; 1977, c. 464, s. 7.1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-19. Acquirement of land and deposits of materials; condemnation proceedings; federal parkways. — The Department of Transportation 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 Department of Transportation 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 Department of Transportation 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 Department of Transportation may, in its discretion, with the consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so doing, the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for right-of-way purposes.

Whenever the Department of Transportation and the owner or owners of the lands, materials, and timber required by the Department of Transportation to carry on the work as herein provided for, are unable to agree as to the price thereof, the Department of Transportation 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 Department of Transportation shall have the same authority, under the same provisions of law provided for construction of State highways, for acquirement of all rights-of-way and easements necessary to comply 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 125 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 Department of Transportation, be a fee-simple title. The said Department of Transportation 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 Department of Transportation, payable out of the State Highway Fund. Any conveyance to the United States Department of Interior of land acquired as provided by this section shall contain a provision whereby the State of North Carolina shall retain concurrent jurisdiction over the areas conveyed. The Governor is further authorized to grant concurrent jurisdiction to lands already conveyed to the United States Department of Interior for parkways and entrances to parkways.

The action of the Department of Transportation heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Department of Transportation 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 Department of Transportation 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 Department of Transportation for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement of rights-of-way on other property by the Department of Transportation. (1921, c. 2, s. 22; 1923, c. 160, s. 6; C. S., s. 3846(bb); 1931, c. 145, s. 23; 1933, c. 172, s. 17; 1935, c. 2; 1937, c. 42; 1949, c. 1115; 1953, c. 217; 1957, c. 65, s. 11; 1959, c. 1025, s. 1; cc. 1127, 1128; 1963, c. 638; 1971, c. 1105; 1973, c. 507, ss. 5, 11; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section.

Cited in Falls Sales Co. v. Board of Transp., 292 N.C. 437, 233 S.E.2d 569 (1977).

§ 136-19.1: Repealed by Session Laws 1977, c. 338, s. 1.

Editor's Note. — Session Laws 1977, c. 338, s. 2, provides: "This act shall not affect a right of an adjoining landowner to surplus material from a State highway contract project for which the contract was entered into prior to the effective date of this act; nor shall this act affect any contract entered into by the Department or Board of Transportation prior to the effective date of this act."

§ 136-19.3. Acquisition of buildings. — Where the right-of-way of a proposed highway necessitates the taking of a portion of a building or structure, the Department of Transportation may acquire, by condemnation or purchase, the entire building or structure, together with the right to enter upon the surrounding land for the purpose of removing said building or structure, upon a determination by the Department of Transportation based upon an affidavit of an independent real estate appraiser that the partial taking will substantially destroy the economic value or utility of the building or structure and (i) that an economy in the expenditure of public funds will be promoted thereby; or (ii) that it is not feasible to cut off a portion of the building without destroying the entire building; or (iii) that the convenience, safety or improvement of the highway will be promoted thereby; provided, nothing herein contained shall be deemed to give the Department of Transportation authority to condemn the underlying fee of the portion of any building or structure which lies outside the right-of-way of any existing or proposed public road, street or highway. (1965, c. 660; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-19.4. Registration of right-of-way plans. — (a) A copy of the cover sheet and plan and profile sheets of the final right-of-way plans for all Department of Transportation projects, on those projects for which plans are prepared, under which right-of-way or other interest in real property is acquired or access is controlled shall be certified by the Department of Transportation to the register of deeds of the county or counties within which the project is located.

The Department shall certify said plan sheets to the register of deeds within two weeks from their formal approval by the Board of Transportation.

(d) If after the approval of said final right-of-way plans the Board of Transportation shall by resolution alter or amend said right-of-way or control of access, the Department of Transportation, within two weeks from the adoption by the Board of Transportation of said alteration or amendment, shall certify to the register of deeds in the county or counties within which the project is located a copy of the amended plan and profile sheets approved by the Board of Transportation and the register of deeds shall remove the original plan sheets and record the amended plan sheets in lieu thereof.

(e) The register of deeds in each county shall collect a fee from the Department of Transportation of five dollars ($5.00) for each original or amended plan and profile sheet recorded. (1967, c. 228, s. 1; 1969, c. 80, s. 13; 1973, c. 507, ss. 5, 12-15; 1975, c. 716, s. 7; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in subsections (a) and (d).

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" near the beginning of the first sentence of subsection (a) and in subsection (e).

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

§ 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 Secretary of Transportation such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Department of Transportation shall issue notice requiring the person or company operating such railroad to appear before the Secretary of Transportation, at his office in Raleigh, upon a day named, which shall not be less than 10 days or more than 20 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 Secretary of Transportation shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If he 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 Secretary of Transportation shall thereupon order the construction of an adequate underpass or overpass at said corssing or he may in his 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 Secretary of Transportation 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 Department of Transportation 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 percent (10%) of the total benefits resulting from the project. The Secretary of Transportation 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 Department of Transportation, 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 Department of Transportation, and the Department of Transportation 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 Department of Transportation, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Department of Transportation 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 Department of Transportation may provide.

(d) Within 60 days after the issuance of the order for construction of an underpass or overpass or the installation of other safety devices as herein provided for, the railroad company against which such order is issued shall submit to the Department of Transportation plans for such construction or installation, and within 10 days thereafter said Department of Transportation, through its chairman of the Department of Transportation, 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 Department of Transportation by said railroad company within 60 days as aforesaid, the chairman of the Department of Transportation shall have plans prepared and submit them to the railroad company. The railroad company shall within 10 days notify the chairman of the Department of Transportation of its approval of the said plans or shall have the right within such 10 days to suggest such changes and amendments in the plans so submitted by the chairman of the Department of Transportation as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Department of Transportation 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 Secretary of Transportation, said Secretary of Transportation 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 Department of Transportation 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 Department of Transportation 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 Department of Transportation shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Department of Transportation 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 Department of Transportation may provide. If the Department of Transportation 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 Secretary of Transportation, 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 Department of Transportation. The Department of Transportation 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 Department of Transportation by the railroad company. If the Department of Transportation 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 Department of Transportation in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Secretary of Transportation 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 Secretary of Transportation requiring such construction or installation, said railroad company shall be guilty of a misdemeanor and shall be fined not less than fifty ($50.00) nor more than one hundred dollars ($100.00) 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 Department of Transportation shall be exclusive.

(g) From any order or decision so made by the Secretary of Transportation 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 Secretary of Transportation, but the railroad company shall proceed to comply with such order in accordance with his 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 Secretary of Transportation 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 Department of Transportation 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 Secretary of Transportation, 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 Department of Transportation 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 percent (50%) by the railroad company and fifty percent (50%) by the Department of Transportation. The maintenance of said overpasses and underpasses shall be performed by the railroad company or the Department of Transportation 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 Department of Transportation. (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; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 11, 15.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Secretary of Transportation" and "Department of Transportation" for "Board of Transportation" throughout the section.

The amendment also substituted "Secretary of Transportation" for "chairman of the Board of Transportation" near the beginning of subsection (a).

§ 136-21. Drainage of highway; application to court; summons; commissioners. — Whenever in the establishment, construction, improvement or maintenance of any public highway it shall be necessary to drain said highway, and to accomplish such purpose it becomes necessary to excavate a canal or canals for carrying the surplus water to some appropriate outlet, either along the right-of-way of said highway or across the lands of other landowners, and by the construction, enlargement or improvement of such canal or canals, lands other that said highway will be drained and benefited, the, and in such event, the Department of Transportation, if said highway be a part of the State highway system, or the county commissioners, if said road is not under State supervision, may, by petition, apply to the superior court of the county in which, in whole or in part, said highway lies or said canal is to be constructed, setting forth the necessity for the construction, improvement or maintenance of said canal, the lands which will be drained thereby, with such particularity as to enable same to be identified, the names of the owners of said land and the particular circumstances of the case; whereupon a summons shall be issued for and served upon each of the proprietors, requiring them to appear before the court at a time to be named in the summons, which shall not be less than 10 days from the service thereof, and upon such day the petition shall be heard, and the court shall appoint three disinterested persons, one of whom shall be a competent civil and drainage engineer recommended by the Department of Natural Resources and Community Development, and the other two of whom shall be resident freeholders of the county or counties in which the road and lands are, in whole or in part, located, as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1925, c. 85, s. 3; c. 122, s. 44; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1262, s. 86; 1977, c. 464, s. 7.1; c. 771, s. 4.)

Editor's Note.—
The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

The first 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 136-25. Repair of road detour. — It shall be mandatory upon the Department of Transportation, its officers and employees, or any contractor or subcontractor employed by the said Department of Transportation, to select, lay out, maintain and keep in as good repair as possible suitable detours by the most practical route while said highways or roads are being improved or constructed, and it shall be mandatory upon the said Department of Transportation and its employees or contractors to place or cause to be placed explicit directions to the traveling public during repair of said highway or road under the process of construction. All expense of laying out and maintaining said detours shall be paid out of the State Highway Fund. (1921, c. 2, s. 11; C. S., s. 3846(s); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-26. Closing of State highways during construction; injury to barriers, warning signs, etc. — If it shall appear necessary to the Department of Transportation, its officers, or appropriate employees, to close any road or highway coming under its jurisdiction so as to permit of proper completion of work which is being performed, such Department of Transportation, its officers or employees, may close, or cause to be closed, the whole or any portion of such road or highway deemed necessary to be excluded from public travel. While any such road or highway, or portion thereof, is so closed, or while any such road or highway, or portion thereof, is in process of construction or maintenance, such Department of Transportation, its officers or appropriate employees, or its contractor, under authority from such Department of Transportation, may erect, or cause to be erected, suitable barriers or obstruction thereon; may post, or cause to be posted, conspicuous notices to the effect that the road or highway, or portion thereof, is closed; and may place warning signs, lights and lanterns on such road or highway, or portions thereof. When such road or highway is closed to the public or in process of construction or maintenance, as provided herein, any person who willfully drives into new construction work, breaks down, removes, injures or destroys any such barrier or barriers or obstructions on the road closed or being constructed, or tears down, removes or destroys any such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns so erected, posted or placed, shall be guilty of a misdemeanor. (1921, c. 2, s. 12; C. S., s. 3846(t); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-27. Connection of highways with improved streets; pipelines and conduits; cost. — When any portion of the State highway system shall run through any city or town and it shall be found necessary to connect the State highway system with improved streets of such city or town as may be designated as part of such system, the Department of Transportation shall build such connecting links, the same to be uniform in dimensions and materials with such State highways: Provided, however, that whenever any city or town may desire to widen its streets which may be traversed by the State highway, the Department of Transportation may make such arrangements with said city or town in connection with the construction of said road as, in its discretion, may seem wise and just under all the facts and circumstances in connection therewith: Provided further, that such city or town shall save the Department of Transportation harmless from any claims for damage arising from the construction of said road through such city or town and including claims for rights-of-way, change of grade line, and interference with public-service structures. And the Department of Transportation may require such city or town to cause to be laid all water, sewer, gas or other pipelines or conduits, together with all necessary house or lot connections or services, to the curb line of such road or street to be constructed: Provided further, that whenever by agreement with the road governing body of any city or town any street designated as a part of the State highway system shall be surfaced by order of the Department of Transportation at the expense, in whole or in part, of a city or town it shall be lawful for the governing body of such city or town to declare an assessment district as to the street to be improved, without petition by the owners of property abutting thereon, and the costs thereof, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways whose tracks are laid in said street, which shall be assessed under their franchise, shall be specially assessed upon the lots or parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon by an equal rate per foot of such frontage. (1921, c. 2, s. 16; 1923, c. 160, c. 4; C. S., s. 3846(ff); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions. — (a) All contracts over ten thousand dollars ($10,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation.

(b) In those cases in which the amount of the work to be let to contract for highway construction or repair is ten thousand dollars ($10,000) or less, at least three informal bids shall be solicited. Upon a written determination of the Secretary of Transportation that the soliciting of three bids is not feasible and is not in the public interest, the requirement may be waived.

(c) The construction and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143, "The Executive Budget Act." In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not

make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction or repair for the purpose of G.S. 136-28.1 and G.S. 136-28.3 and Article 1 of Chapter 143 of the General Statutes, "The Executive Budget Act."

(e) The Department of Transportation may enter into contracts for construction or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the State Highway Administrator that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) Contracts for professional engineering services may be let without taking and considering bids or proposals. However, the Department of Transportation is encouraged to solicit proposals when it is in the public interest to do so.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16.)

Editor's Note. —

The second 1973 amendment, effective Sept. 1, 1974, substituted "Chapter 44A" for "G.S. 136-28.3" in the first sentence of subsection (c) and deleted the former last sentence of subsection (c), which provided that the bonds should cover materials furnished or labor performed in the prosecution of the work called for in the contract regardless of whether or not it entered into and became a component part of the public improvement.

The 1977 amendment, effective July 1, 1977, substituted "Secretary of Transportation" for "chairman of the Board of Transportation" near the middle of subsection (e) and substituted "Department of Transportation" for "Board of Transportation" in two places in the first sentence of subsection (a) and throughout subsections (c) through (h).

§ 136-28.2. Relocated highways; contracts let by others. — The Department of Transportation is authorized to permit power companies and governmental agencies, including agencies of the federal government, when it is necessary to relocate a public highway by reason of the construction of a dam, to let contracts for the construction of the relocated highway. The construction shall be in accordance with the Department of Transportation standards and specifications. The Department of Transportation is further authorized to reimburse the power company or governmental agency for betterments arising out of the construction of the relocated highway, provided the bidding and the award is in accordance with the Department of Transportation's regulations and the Department of Transportation approves the award of the contract. (1971, c. 972, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

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

§ 136-29. Adjustment of claims. — (a) Upon the completion of any contract for the construction of any State highway awarded by the Department of Transportation to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under his contract, he may, within 60 days from the time of receiving his final estimate, submit to the State Highway Administrator a written and verified claim for such amount as he deems himself entitled to under the said contract setting forth the facts upon which said claim is based. In addition, the claimant, either in person or through counsel, may appear before the State Highway Administrator and present any additional facts and argument in support of his claim. Within 90 days from the receipt of the said written claim or within such additional time as may be agreed to between the State Highway Administrator and the contractor, the State Highway Administrator shall make an investigation of said claim and 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.

(e) The provisions of this section shall be deemed to enter into and form a part of every contract entered into between the Department of Transportation and any contractor, and no provision in said contracts shall be valid that is in conflict herewith. (1939, c. 318; 1947, c. 530; 1957, c. 65, s. 11; 1963, c. 667; 1965, c. 55, s. 11; 1967, c. 873; 1973, c. 507, ss. 5, 17, 18; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in subsections (a) and (e).

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

For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

Recovery, if any, under the contract, etc. —

In accord with 2nd paragraph in original. See Ray D. Lowder, Inc. v. North Carolina State Hwy. Comm'n, 26 N.C. App. 622, 217 S.E.2d 682 (1975).

In accord with 3rd paragraph in original. See Blankenship Constr. Co. v. North Carolina State Hwy. Comm'n, 28 N.C. App. 593, 222 S.E.2d 452 (1976).

This section provides for recovery only within the terms and framework of the contract. Inland Bridge Co. v. North Carolina State Hwy. Comm'n, 30 N.C. App. 535, 227 S.E.2d 648 (1976).

Strict compliance with contract provisions is vital prerequisite for recovery of additional compensation based on altered work, changed conditions or extra work. Blankenship Constr. Co. v. North Carolina State Hwy. Comm'n, 28 N.C. App. 593, 222 S.E.2d 452 (1976).

Failure to Comply with Notice and Record-Keeping Requirements Is Bar to Recovery. — The State should not be obligated to pay a claim for additional compensation unless it is given a reasonable opportunity to insure that the claim is based on accurate determinations of work and cost, and contract notice and record-keeping requirements constitute reasonable protective measures, so that a contractor's failure to adhere to the requirements is necessarily a bar to recovery for additional compensation. Blankenship Constr. Co. v. North Carolina State Hwy. Comm'n, 28 N.C. App. 593, 222 S.E.2d 452 (1976).

Applied in Dickerson, Inc. v. Board of Transp., 26 N.C. App. 319, 215 S.E.2d 870 (1975).

Stated in Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

§ 136-30. Uniform guide and warning signs on highways. — The Department of Transportation is hereby authorized to classify, designate and mark both intrastate and interstate highways, including connecting streets in incorporated towns and cities, lying within this State and to provide a system of marking and signing such highways. Highways shall be distinctly marked with some standard, uniform design and the numbers thereon shall correspond with the numbers given the various routes by the Department of Transportation and

shown on official maps issued by the Department of Transportation. Other guide signs and warning signs shall also be of uniform design. The system of marking and signing highways shall correlate with and so far as possible conform to the system adopted in other states.

The Department of Transportation shall have the power to control all signs within the right-of-way of State highways.

The Department of Transportation may erect proper and uniform signs directing persons to roads and places of importance. (1921, c. 2, ss. 9(a), 9(b); C. S., ss. 3846(q), 3846(r); 1927, c. 148, s. 54; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-30.1. Center line and pavement edge line markings. — (a) The Department of Transportation shall mark with center lines and edge lines all interstate and primary roads and all paved secondary roads having an average traffic volume of 100 vehicles per day or more, and which are traffic service roads forming a connecting link in the State highway system. The Department of Transportation shall not be required to mark with center and edge lines local subdivision roads, loop roads, dead-end roads of less than one mile in length or roads the major purpose of which is to serve the abutting property, nor shall the Department of Transportation be required to mark with edge lines those roads on which curbing has been installed or which are less than 16 feet in width.

(b) Whenever the Department of Transportation shall construct a new paved road, relocate an existing paved road, resurface an existing paved road, or pave an existing road which under the provisions of subsection (a) hereof is required to be marked with lines, the Department of Transportation shall, within 30 days from the completion of the construction, resurfacing or paving, mark the said road with the lines required in subsection (a) hereof.

(c) The center and pavement edge lines required by this section shall be installed and maintained in conformance with the Manual on Uniform Traffic Control Devices for Streets and Highways issued by the United States Department of Transportation, Federal Highway Administration, 1971, or any subsequent revisions thereof approved by the Department of Transportation. (1969, c. 1172, s. 1; 1973, c. 496, ss. 1, 2; c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-32. Other than official signs prohibited. — No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light or imitation of any official sign, marker, signal or light erected under the provisions of G.S. 136-30 and 136-31, except in cases of emergency. No person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial advertising: Provided, nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the Department of Transportation or by any local authority referred to in G.S. 136-31. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and punished in the discretion of the court. The Department of Transportation may remove any signs erected

without authority. (1921, c. 2, s. 9(b); C. S., s. 3846(r); 1927, c. 148, ss. 56, 58; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-32.2. Placing blinding, deceptive or distracting lights unlawful.

(c) The provisions of this section shall not apply to any lights or lighting devices erected or maintained by the Department of Transportation 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 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 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; 1973, c. 507, s. 5; 1975, c. 716, s. 5; 1977, c. 464, ss. 7.1, 17.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of subsection (d).

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in the first sentence of subsection (c) and deleted "the Department of Motor Vehicles by and through" preceding "the State Highway Patrol" near the beginning of subsection (d).

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

§ 136-33. Damaging or removing signs; rewards. — (a) No person shall willfully deface, damage, knock down or remove any sign posted as provided in G.S. 136-26, 136-30, or 136-31.

(b) No person, without just cause or excuse, shall have in his possession any highway sign as provided in G.S. 136-26, 136-30, or 136-31.

(b1) Any person violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than six months, or both, in the discretion of the court.

(c) The Department of Transportation is authorized to offer a reward not to exceed five hundred dollars ($500.00) for information leading to the arrest and conviction of persons who violate the provisions of this section, such reward to be paid from funds of the Department of Transportation.

(d) The enforcement of this section shall be the specific responsibility and duty of the State Highway Patrol in addition to all other law-enforcement agencies and officers within this State. (1927, c. 148, s. 57; 1971, c. 671; 1973, c. 507, s. 5; 1975, cc. 11, 93; c. 716, s. 7; 1977, c. 464, ss. 7.1, 18.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, substituted "No person" for "Any person who" at the beginning of subsections (a) and (b), substituted "damage" for "injure" near the beginning of subsection (a), deleted "shall be guilty of a misdemeanor" at the end of subsections (a) and (b) and added subsection (b1). The amendment also increased the reward in subsection (c) from $200.00 to $500.00.

The second 1975 amendment, effective July 1, 1975, added subsection (d).

The third 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in subsection (d) as it stood before the 1977 amendment.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in two places in subsection (c) and deleted "the Department of Transportation by and through" preceding "the State Highway Patrol" in subsection (d).

§ 136-34. Department of Transportation authorized to furnish road equipment to municipalities. — The Department of Transportation is hereby authorized to furnish municipalities road maintenance equipment to aid such municipalities in the maintenance of streets upon such rental agreement as may be agreed upon by the Department of Transportation and the said municipality. Such rental, however, is to be at least equal to the cost of operation, plus wear and tear on such equipment; and the Department of Transportation shall not be required to furnish equipment when to do so would interfere with the maintenance of the streets and highways under the control of the Department of Transportation. (1941, c. 299; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 19.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section. The amendment also deleted "for which no State highway funds are provided" following "maintenance of streets" near the middle of the first sentence.

§ 136-35. Cooperation with other states and federal government. — It shall also be the duty of the Department of Transportation, where possible, to cooperate with the state highway commissions of other states and with the federal government in the correlation of roads so as to form a system of intercounty, interstate, and national highways. (1915, c. 113, s. 12; C. S., s. 3584; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-41.1. Appropriation to municipalities; allocation of funds. — (a) There is hereby annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one cent (1¢) tax on each gallon of motor fuel as taxed by G.S. 105-434 and 105-435, to be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with the following formula:

Seventy-five percent (75%) of said funds shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the Secretary of the North Carolina Department of Administration. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) 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 does not form a part of the highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds by virtue of G.S. 136-41.1 and 136-41.2 and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 each year after March 15, 1951. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

No allocation to cities and towns shall be made under the provisions of this section from the one cent (1¢) per gallon additional tax on gasoline imposed by Chapter 46 of the Session Laws of 1965, unless and until said additional one cent (1¢) per gallon gasoline tax produces funds which are not needed for or committed by said Chapter 46 of the Session Laws of 1965, to the payment of the principal of or the interest on the secondary road bonds issued pursuant to the provisions of said Chapter 46 of the Session Laws of 1965. The Department of Transportation is hereby authorized to withhold each year an amount not to exceed one percent (1%) of the total amount appropriated in G.S. 136-41.1 for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under G.S. 136-41.1 and 136-41.2 submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis.

(b) For purposes of this section and of G.S. 136-41.2 and 136-41.3, urban service districts defined by the governing board of a consolidated city-county in which street services are provided by the consolidated city-county shall be considered eligible municipalities, and the allocations to be made thereby shall be made to the government of the consolidated city-county. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2; 1969, c. 665, ss. 1, 2; 1971, c. 182, ss. 1-3; 1973, c. 476, s. 193; c. 500, s. 1; c. 507, s. 5; c. 537, s. 6; 1975, c. 513; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1975 amendment divided the second paragraph of subsection (a), which formerly consisted of one sentence, into the present first and third sentences of that paragraph and added the present second sentence.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout subsection (a).

Powell Bill funds are restricted to the purposes enumerated under § 136-41.3 and the expenditure for a bikeway system is not a purpose enumerated thereunder. Opinion of Attorney General to Mr. William F. Caddell, Jr., 15 December 1975.

§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.

The provisions of subsection (b) refer to the current fiscal year in which the funds are allocated and received by the municipality. See opinion of Attorney General to Mr. John S. Freeman, Town Attorney, Town of Stallings, 46 N.C.A.G. 17 (1976).

§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets. — The funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways located within the rights-of-way of public streets and highways.

Each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of G.S. 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall file a statement under oath with the Secretary of Transportation showing in detail the expenditure of funds received by virtue of G.S. 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. Any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year.

In the discretion of the local governing body of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 it may contract with the Department of Transportation to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The Department of Transportation within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the Department of Transportation in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality, as defined in G.S. 136-41.2, having a population of less than 5,000, the Department of Transportation shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year

beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on nonsystem streets as the municipality may request within the limits of the current or accrued payments made to the municipality under the provisions of G.S. 136-41.1.

In computing the costs, the Department of Transportation may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Department of Transportation uses in making charges to one of its own department or against its own department, or the Department of Transportation may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights-of-way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Department of Transportation free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Department of Transportation, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the Department of Transportation and if it desires to dissolve the contract at the end of any two-year period it shall notify the Department of Transportation of its desire to terminate said contract on or before April 1 of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Department of Transportation for the fiscal year ending June 30, by August 1 following the fiscal year, then the Department of Transportation shall apply the said municipality's allocation under G.S. 136-41.1 to this account until said account is paid and the Department of Transportation shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the Department of Transportation in accordance with the provisions of the three preceding paragraphs.

The Department of Transportation is authorized to apply a municipality's share of funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the following accounts of the municipality with the said Department of Transportation, which the municipality fails to pay:

(1) Cost sharing agreements for right-of-way entered into pursuant to G.S. 136-66.3, but not to exceed ten percent (10%) of any one year's allocation until the debt is repaid,

(2) The cost of relocating municipally owned waterlines and other municipally owned utilities on a State highway project which is the responsibility of the municipality,

(3) For any other work performed for the municipality by the Department of Transportation or its contractor by agreement between the Department of Transportation and the municipality, and

(4) For any other work performed that was made necessary by the construction, reconstruction or paving of a highway on the State highway system for which the municipality is legally responsible. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11; 1969, c. 665, ss. 3, 4; 1971, c. 182, s. 4; 1973, c. 193; c. 507, s. 5; 1977, c. 464, ss. 7.1, 20; c. 808.)

Editor's Note. —
The first 1977 amendment, effective July 1, 1977, substituted "Secretary of Transportation" for "chairman of the Board of Transportation" in the last sentence of the second paragraph and substituted "Department of Transportation" for "Board of Transportation" throughout the rest of the section.

The second 1977 amendment added "or for the planning, construction and maintenance of bikeways located within the rights-of-way of public streets and highways" to the end of the first paragraph.

Liability of City for Damages When Maintenance Contracted. — An individual user of a street, which is part of the State highway system, who sustains personal injuries or property damage as the result of a dangerous condition of such street, cannot maintain an action for damages against a city which contracted with the Department of Transportation to repair or remove such condition and then did nothing whatsoever about it. Matternes v. City of Winston-Salem, 286 N.C. 1, 209 S.E.2d 481 (1974).

§ 136-42.1. Archaeological objects on highway right-of-way. — The Department of Transportation is authorized to expend highway funds for reconnaissance surveys, preliminary site examinations and salvage work necessary to retrieve and record data and the preservation of archaeological and paleontological objects of value which are located within the right-of-way acquired for highway construction. The Department of Cultural Resources shall be consulted when objects of scientific or historical significance might be anticipated or encountered in highway right-of-way and a determination made by that Department as to the national, State, or local importance of preserving any or all fossil relics, artifacts, monuments or buildings. The Department of Cultural Resources shall request advice from other agencies or institutions having special knowledge or skills that may not be available in the said Department for the determination of the presence of or for the evaluation and salvage of prehistoric archaeological or paleontological remains within the highway right-of-way. The Department of Transportation is authorized to contract with the Department of Cultural Resources and to provide funds necessary to perform reconnaissance surveys, preliminary site examination and salvage operation at those sites determined by the Department of Cultural Resources to be of sufficient importance to be preserved for the inspiration and benefit of the people of North Carolina. The Department of Cultural Resources is authorized to enter into contracts and to make arrangements to perform the necessary work pursuant to this section. The Department of Cultural Resources shall assume possession and responsibility for any and all historical objects and is authorized to enter into agreements with governmental units and agencies thereof, institutions, and charitable organizations for the preservation of any or all fossil relics, artifacts, monuments, or buildings. (1971, c. 345, s. 1; 1973, c. 476, s. 48; c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-42.2. Markers on highway; cooperation of Department of Transportation. — The Department of Transportation is hereby authorized to cooperate with the Department of Cultural Resources in marking historic spots along the State highways. (1927, c. 226, s. 1; 1933, c. 172, s. 17; 1943, c. 237; 1957, c. 65, s. 11; 1971, c. 345, s. 2; 1973, c. 476, s. 48; c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-42.3. Historical marker program. — The Department of Transportation is hereby authorized to expend not more than ten thousand dollars ($10,000) a year for the purpose of purchasing historical markers, to be erected by the Department of Transportation on sites selected by the Department of Cultural Resources which Department shall also prepare the inscriptions and deliver the completed markers to the Department of Transportation. This expenditure is hereby declared to be a valid expenditure of State highway maintenance funds. No provision in this section shall be construed to prevent the expenditure of any federal highway funds that may be available for this purpose. (1935, c. 197; 1943, c. 237; 1951, c. 766; 1955, c. 543, s. 2; 1957, c. 65, s. 11; 1971, c. 345, s. 2; 1973, c. 476, s. 48; c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-44. Maintenance of grounds at home of Nathaniel Macon and grave of Anne Carter Lee. — The Department of Transportation is hereby authorized and directed through the highway supervisor of the Warren County District, to clean off and keep clean the premises and grounds at the old home of Nathaniel Macon, known as "Buck Springs," which are owned by the County of Warren, and also to look after the care and keeping the grounds surrounding the grave of Miss Anne Carter Lee, daughter of General Robert E. Lee, in Warren County. (1939, c. 38; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

ARTICLE 2A.

State Roads Generally.

§ 136-44.1. Statewide road system; policies. — The Department of Transportation shall develop and maintain a statewide system of roads and highways commensurate with the needs of the State as a whole and it shall not sacrifice the general statewide interest to the purely local desires of any particular area. The Board of Transportation shall formulate general policies and plans for a statewide system of highways. The Board shall formulate policies governing the construction, improvement and maintenance of roads and highways of the State with due regard to farm-to-market roads and school bus routes. (1973, c. 507, s. 3; 1975, c. 716, s. 7.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the beginning of the first sentence.

§ 136-44.2. Budget and appropriations. — The Director of the Budget shall include in the "Budget Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, and urban road systems. The State primary system shall include all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate

limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

Notwithstanding any of the provisions of this Article, the Department of Transportation shall have such powers as are necessary to comply fully with the provisions of present or future federal-aid acts.

The Department of Transportation in its discretion may alter any dollar amount set forth in the "Budget Appropriations Bill" for any of the foregoing purposes, provided that a report of all alterations, setting forth the reason or reasons for each, shall be submitted to the House and Senate Roads Committee and the House and Senate Appropriations Subcommittee on Roads within three months after the close of the fiscal year, and provided further that no alteration may exceed ten percent (10%) of the original figure without the concurrence of the Advisory Budget Commission. The "Budget Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

In the event receipts and increments to the State Highway Fund shall be more than the appropriations made for the preceding fiscal year, such excesses shall be allocated by the Director of the Budget to the Department of Transportation for school and industrial access roads and unforeseen happenings or state of affairs requiring prompt action, with fifty percent (50%) of the balance to be allocated to the State secondary roads program on the basis of need as determined by the Department of Transportation and the remaining fifty percent (50%) to be allocated in accordance with G.S. 136-44.5. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section.

§ 136-44.2A. Reports to appropriations committees of General Assembly. — In each year that an appropriation bill is considered by the General Assembly, the Department of Transportation shall make a report to the appropriations committee of each House on all services provided by the Department to the public for which a fee is charged. The report shall include an analysis of the cost of each service and the fee charged for that service. (1975, c. 875, s. 8.)

Editor's Note. — Session Laws 1975, c. 875, s. 64, makes the act effective July 1, 1975.

§ 136-44.3. Annual maintenance program; State primary and urban systems. — The Department of Transportation shall make a study of the maintenance needs and costs of the State primary and urban systems. On the basis of the costs and proposed appropriations, the Department of Transportation shall develop a statewide annual maintenance program for the State primary and urban systems which shall be subject to the approval of the Board of Transportation and shall take into consideration the general maintenance needs, the special maintenance needs and vehicular traffic and other factors deemed pertinent. The Department of Transportation, from time to time, shall restudy the costs and criteria used as a basis for its annual maintenance program. Copies of the annual maintenance program shall be made available to any member of the General Assembly upon request. Each division engineer, at the end of the fiscal year, shall certify the maintenance of highways in his division in accordance with the annual work program, along with the explanations of any deviations. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 39.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in three places.

The 1977 amendment, effective July 1, 1977, rewrote the fourth sentence.

§ 136-44.4. Annual construction program; State primary and urban systems. — The Department of Transportation shall develop an annual construction program for the state-funded improvements on the primary and urban system highways and for all federal-aid construction programs which shall be approved by the Board of Transportation. It shall include a statement of the immediate and long-range goals. The Department shall develop criteria for determining priorities of projects to insure that the long-range goals and the statewide needs as a whole are met, which shall be approved by the Board of Transportation. The annual construction program shall list all projects according to priority. A brief description of each project shall be given, identifying the highway number, county, nature of the improvement and the estimated cost of the project shall be indicated. Copies of the most recent annual work program shall be made available to any member of the General Assembly upon request. The Department of Transportation shall make annual reports after the completion of the fiscal year to be made available to the legislative committees and subcommittees for highway matters, county commissioners, and other persons upon request. These reports shall indicate the expenditure on each of the projects and the status of all projects set out in the work program. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 40.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in two places.

The 1977 amendment, effective July 1, 1977, rewrote the sixth sentence.

§ 136-44.5. Secondary roads; mileage study; allocation of funds. — Before July 1, in each calendar year, the Department of Transportation shall make a study of all state-maintained unpaved roads in the State. The study shall determine the number of miles of unpaved state-maintained roads in each county, and the total number of miles of unpaved state-maintained roads in the State. Except for federal-aid programs, the Department shall allocate all secondary road construction funds on the basis of a formula using the study figures. The allocation shall be as follows: Each county shall receive a percentage of the total funds available for totally state-funded secondary road construction, the percentage to be determined as a factor of the number of miles of unpaved state-maintained secondary roads in the county divided by the total number of miles of unpaved state-maintained secondary roads in the State. Copies of the Department study of unpaved state-maintained secondary roads and copies of the individual county allocations shall be made available to newspapers having general circulation in each county. (1973, c. 507, s. 3; 1975, c. 716, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the middle of the first sentence.

§ 136-44.6. Uniformly applicable formula for the allocation of secondary roads maintenance funds. — The Department of Transportation shall develop a uniformly applicable formula for the allocation of secondary roads maintenance funds for use in each county. The formula shall take into consideration the number of paved and unpaved miles of State-maintained secondary roads in each county and such other factors as experience may dictate. (1973, c. 507, s. 3; 1975, c. 716, s. 7; c. 753.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the beginning of the first sentence.

The second 1975 amendment, effective July 1, 1975, inserted "State-maintained" near the middle of the second sentence.

§ 136-44.7. Secondary roads; annual work program. — The Department of Transportation shall be responsible for developing criteria for improvements and maintenance of secondary roads. The criteria shall be adopted by the Board of Transportation before it shall become effective. The Department of Transportation shall be responsible for developing annual work programs for both construction and maintenance of secondary roads in each county in accordance with criteria developed. It shall reflect the long-range and immediate goals of the Department of Transportation. Projects on the annual construction program for each county shall be rated according to their priority based upon the secondary road criteria and standards which shall be uniform throughout the State. Tentative construction projects and estimated funding shall also be listed in accordance to priority. The annual construction program shall be adopted by the Board of Transportation before it shall become effective. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 8.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in three places.

The 1977 amendment, effective July 1, 1977, substituted "Board of Transportation" for "Secondary Roads Council" in two places.

§ 136-44.8. Submission of secondary roads construction programs to the county commissioners. — Representatives of the Board of Transportation shall meet with the board of county commissioners at a regular or special meeting of the board of county commissioners, notice of which meeting shall be published by the Department of Transportation in a newspaper published in or having a general circulation in the county. The representatives of the Department shall there discuss, with the board of county commissioners and other citizens present, proposed plans and proposals in the annual construction programs for the county. After the meeting, the board of county commissioners may make a written recommendation to the Board of Transportation as to the expenditure of funds for work in the county, and the Board of Transportation shall observe and follow such recommendations insofar as they are compatible with its general plans, standards, criteria and available funds, but having due regard to development plans of the county and to the maintenance and improvement needs of all existing roads in the county. The annual work program adopted by the board shall be published, and it shall be followed, unless changes are approved by the Board of Transportation and notice of any changes is given the board of county commissioners. The board of county commissioners may petition the Board of Transportation for review of any changes to which it does not consent, and the determination of the Board of Transportation shall be final. Upon request, the most recent annual work programs adopted shall be submitted to any member of the General Assembly. The Department of Transportation shall make the construction work program in each county available to the newspapers having a general circulation in the county. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 9.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in two places.

The 1977 amendment, effective July 1, 1977, rewrote the section.

§ 136-44.9. Secondary roads; annual statements. — The Department of Transportation shall, before the end of the calendar year, prepare and file with the board of county commissioners a statement setting forth (i) each secondary highway designated by number, located in the county upon which the paving or improvement was made during the calendar year; (ii) the amount expended for improvements of each such secondary highway during the calendar year; and (iii) the nature of such improvements. The Department of Transportation, in its annual report, shall report on each secondary road construction project including the stage of completion and funds expended. The pertinent portion of these reports for each county shall be made available to the board of county commissioners. (1973, c. 507, s. 3; 1975, c. 615; c. 716, s. 7.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, substituted "before the end of the calendar year" for "within three months after the close of each fiscal year" near the beginning of the first sentence and substituted "calendar" for "fiscal" in clauses (i) and (ii).

The second 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in two places.

§ 136-44.10. Additions to secondary road system. — The Board of Transportation shall adopt uniform statewide or regional standards and criteria which the Department of Transportation shall follow for additions to the secondary road system. These standards and criteria shall be promulgated and copies made available for free distribution. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, ss. 8, 21.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the middle of the first sentence.

The 1977 amendment, effective July 1, 1977, substituted "Board of Transportation" for "Secondary Roads Council" in the first sentence and deleted the former second sentence, which read "The standards and criteria shall be subject to approval of the Board of Transportation."

§ 136-44.11. Right-of-way acquisitions; preliminary engineering annual report. — The Department of Transportation shall include in its annual report projects for which preliminary engineering has been performed more than two years but where there has been no right-of-way acquisition, projects where right-of-way has been acquired more than two years but construction contracts have not been let. The report shall include the year or years in which the preliminary engineering was performed and the cost incurred, the number of right-of-way acquisitions for each project, the dates of the first and last acquisition and the total expenditure for right-of-way acquisition. The report shall include the status of the construction project for which the preliminary engineering was performed or the right-of-way acquired and the reasons for delay, if any. (1973, c. 507, s. 3; 1975, c. 716, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the beginning of the first sentence.

§§ 136-44.15 to 136-44.19: Reserved for future codification purposes.

ARTICLE 2B.

Public Transportation.

§ 136-44.20. Board of Transportation designated agency to administer public transportation programs; authority of political subdivisions. — The Board of Transportation is hereby designated as the agency of the State of North Carolina responsible for administering all federal and/or State programs relating to public transportation, and the Board is hereby granted the authority to do all things required under applicable federal and/or State legislation to administer properly public transportation programs within North Carolina. Nothing herein shall be construed to prevent a political subdivision of the State of North Carolina from applying for and receiving direct assistance from the United States government under the provisions of any applicable legislation. (1975, c. 451; 1977, c. 341, s. 2.)

Editor's Note. — Session Laws 1975, c. 366, s. 2, makes the act effective July 1, 1975.

The 1977 amendment substituted "federal and/or State programs relating to public

transportation" for "federal programs relating to mass transportation," "federal and/or State legislation" for "federal legislation," and "public transportation programs within North Carolina" for "mass transportation programs within the State of North Carolina" in the first sentence and deleted "federal" preceding "legislation" near the end of the second sentence.

Session Laws 1977, c. 341, s. 1, substituted "Public" for "Mass" in the article heading.

§§ 136-44.21 to 136-44.29: Reserved for future codification purposes.

ARTICLE 2C.

House Movers Licensing Board.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§§ 136-44.30 to 136-44.34: Repealed by Session Laws 1977, c. 579.

ARTICLE 2D.

Railroad Revitalization.

§ 136-44.35. Department of Transportation designated as agency to administer federal railroad revitalization programs. — The Department of Transportation is hereby designated as the agency of the State of North Carolina responsible for administering all federal programs relating to railroad revitalization. The Department of Transportation is authorized to adopt and implement a State railroad plan and to do all things necessary to properly administer the federal railroad revitalization programs within the State of North Carolina. This section shall not be construed to prevent an operating railroad company in the State of North Carolina from applying for and receiving direct assistance from the United States Government under the provisions of any applicable federal legislation. (1977, c. 584.)

ARTICLE 3.

State Highway System.

Part 1. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways. — The general purpose of the laws creating the Department of Transportation is that said Department of Transportation shall take over, establish, construct, and maintain a statewide system of hard-surfaced and other dependable highways running to all county seats, and to all principal towns, State parks, and principal State institutions, and linking up with state highways of adjoining states and with national highways into national forest reserves by

the most practical routes, with special view of development of agriculture, commercial and natural resources of the State, and for the further purpose of permitting the State to assume control of the State highways, repair, construct, and reconstruct and maintain said highways at the expense of the entire State, and to relieve the counties and cities and towns of the State of this burden. (1921, c. 2, s. 2; C. S., s. 3846(a); 1943, c. 410; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

Liability for Defects, etc. —
An individual user of a street, which is part of the State highway system, who sustains personal injuries or property damage as the result of a dangerous condition of such street, cannot maintain an action for damages against a city which contracted with the Department of Transportation to repair or remove such condition and then did nothing whatsoever about it. Matternes v. City of Winston-Salem, 286 N.C. 1, 209 S.E.2d 481 (1974).

§§ 136-46, 136-47: Repealed by Session Laws 1977, c. 464, s. 22, effective July 1, 1977.

Part 2. County Public Roads Incorporated into State Highway System.

§ 136-51. Maintenance of county public roads vested in Department of Transportation. — From and after July 1, 1931, the exclusive control and management and responsibility for all public roads in the several counties shall be vested in the Department of Transportation as hereinafter provided, and all county, district, and township highway or road commissioners, by whatever name designated, and whether created under public, public-local, or private acts, shall be abolished:

Provided, that for the purpose of providing for the payment of any bonded or other indebtedness, and for the interest thereon, that may be outstanding as an obligation of any county, district, or township commission herein abolished, the boards of county commissioners of the respective counties are hereby constituted fiscal agents, and are vested with authority and it shall be their duty to levy such taxes on the taxable property or persons within the respective county, district, or township by or for which said bonds or other indebtedness were issued or incurred and as are now authorized by law to the extent that the same may be necessary to provide for the payment of such obligations; and the respective commissions herein abolished shall on or before July 1, 1931, turn over to said boards of county commissioners any moneys on hand or evidences of indebtedness properly applicable to the discharge of any such indebtedness (except such moneys as are mentioned in paragraph (a) above); and all uncollected special road taxes shall be payable to said boards of county commissioners, and the portion of said taxes applicable to indebtedness shall be applied by said commissioners to said indebtedness, or invested in a sinking fund according to law. All that portion of said taxes or other funds coming into the hands of said county commissioners and properly applicable to the maintenance or improvement of the public roads of the county shall be held by them as a special road fund and disbursed upon proper orders of the Department of Transportation.

Provided, further, that in order to fully carry out the provisions of this section the respective boards of county commissioners are vested with full authority to prosecute all suitable legal actions. (1931, c. 145, s. 7; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§§ 136-52, 136-53: Repealed by Session Laws 1977, c. 464, s. 22, effective July 1, 1977.

Part 3. Power to Make Changes in Highway System.

§ 136-54. Power to make changes. — The Board of Transportation shall be authorized, when in its judgment the public good requires it, to change, alter, add to, or abandon and substitute new sections for, any portion of the State highway system. (1927, c. 46, s. 1; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1965, c. 538, s. 2; 1967, c. 1128, s. 1; 1973, c. 507, s. 5; 1977, c. 464, s. 23.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, deleted "Subject to the provisions of G.S. 136-60" at the beginning of the section, and deleted, at the end of the section, "as now or hereafter, taken over, maintained and established: Provided, no road shall be changed, altered, or abandoned so as to disconnect county seats and principal towns."

Exercise of the Board's discretionary authority so conferred upon it by this section is not subject to judicial review, unless its action is so clearly unreasonable as to amount to oppressive and manifest abuse. Guyton v. North Carolina Bd. of Transp., 30 N.C. App. 87, 226 S.E.2d 175 (1976).

§ 136-55. Notice of relocation or abandonment of numbered highways. — Upon the approval by the Department of Transportation of the preliminary design for the relocation or construction upon new location of any State, federal or interstate numbered highways, the Department of Transportation shall post a map at the courthouse door in the county or counties where the proposed project is located showing the existing location and the new location of said highway. In addition, said map shall show any segments of the existing highways which are to be abandoned and removed from the State highway system for maintenance by the Department of Transportation upon completion and opening to traffic of the new or relocated highway. (1927, c. 46, s. 2; 1931, c. 145; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1967, c. 1128, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-55.1. Notice of abandonment. — At least 60 days prior to any action by the Department of Transportation abandoning a segment of road and removing the same from the State highway system for maintenance, except roads abandoned on request of the county commissioners under G.S. 136-63, the Department of Transportation shall notify by registered mail or personal delivery all owners of property adjoining the section of road to be abaondoned whose whereabouts can be ascertained by due diligence. Said notice shall describe the section of road which is proposed to be abandoned and shall give the date, place and time of the Department of Transportation meeting at which the action abandoning said section of road is to be taken. (1957, c. 1063; 1967, c. 1128, s. 3; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-58: Repealed by Session Laws 1977, c. 464, s. 22, effective July 1, 1977.

§ 136-62. Right of petition. — The citizens of the State shall have the right to present petitions to the board of county commissioners, and through the board to the Department of Transportation, concerning additions to the system and improvement of roads. The board of county commissioners shall receive such petitions, forwarding them on to the Board of Transportation with their recommendations. Petitions on hand at the time of the periodic preparation of the secondary road plan shall be considered by the representatives of the Department of Transportation in preparation of that plan, with report on action taken by these representatives on such petitions to the board of commissioners at the time of consultation. The citizens of the State shall at all times have opportunities to discuss any aspect of secondary road additions, maintenance, and construction, with representatives of the Department of Transportation in charge of the preparation of the secondary road plan, and if not then satisfied opportunity to discuss any such aspect with the division engineer, the Secretary of Transportation, and the Board of Transportation in turn. (1931, c. 145, s. 14; 1933, c. 172, s. 17; 1957, c. 65, s. 7; 1965, c. 55, s. 12; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 24, 24.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Chairman of the Board of Transportation" in the first sentence, substituted "Department of Transportation" for "Board of Transportation" near the middle of the third sentence and near the middle of the fourth sentence, and substituted "Secretary of Transportation" for "Director of Highways" near the end of the fourth sentence.

§ 136-63. Change or abandonment of roads. — The board of county commissioners of any county may, on its own motion or on petition of a group of citizens, request the Board of Transportation to change or abandon any road in the secondary system when the best interest of the people of the county will be served thereby. The Board of Transportation shall thereupon make inquiry into the proposed change or abandonment, and if in its opinion the public interest demands it, shall make such change or abandonment. If the change or abandonment shall affect a road connecting with any street of a city or town, the change or abandonment shall not be made until the street governing body of the city or town shall have been duly notified and given opportunity to be heard on the question. Any request by a board of county commissioners or street-governing body of a city refused by the Board of Transportation may be presented again upon the expiration of 12 months. (1931, c. 145, s. 15; 1957, c. 65, s. 8; 1965, c. 55, s. 13; 1973, c. 507, s. 22½; 1975, c. 19, s. 45; 1977, c. 464, s. 25.)

Editor's Note. —
The 1975 amendment corrected an error in the 1973 amendatory act by substituting "its" for "his" preceding "opinion" near the middle of the second sentence.

The 1977 amendment, effective July 1, 1977, substituted "Board of Transportation" for "Council" in three places, deleted the former fourth sentence, relating to review by the Board of Transportation of the decision of the Council, and inserted "by a board of county commissioners or street-governing body of a city" in the last sentence.

§ 136-64. Filing of complaints with Department of Transportation; hearing and appeal. — In the event of failure to maintain the roads of the State highway system or any county road system in good condition, the board of county commissioners of such county may file complaint with the Department of Transportation. When any such complaint is filed, the Department of Transportation shall at once investigate the same, and if the same be well founded, the said Department of Transportation shall at once order the repair and maintenance of the roads complained of and investigate the negligence of the persons in charge of the roads so complained of, and if upon investigation the person in charge of the road complained of be at fault, he may be discharged from the service of the Department of Transportation. The board of commissioners of any county, who shall feel aggrieved at the action of the Department of Transportation upon complaint filed, may appeal from the decision of the Department of Transportation to the Governor, and it shall be the duty of the Governor to adjust the differences between the board of county commissioners and the Department of Transportation. (1921, c. 2, s. 20; C. S., s. 3846(11); 1931, c. 145, s. 17; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-64.1. Applications for intermittent closing of roads within watershed improvement project by Department of Transportation; notice; regulation by Department; delegation of authority; markers. — (a) Upon proper application by the board of commissioners of a drainage district established under the provisions of Chapter 156 of the General Statutes of North Carolina, by the board of trustees of a watershed improvement district established under the provisions of Article 2 of Chapter 139 of the General Statutes, by the board of county commissioners of any county operating a county watershed improvement program under the provisions of Article 3 of Chapter 139 of the General Statutes, by the board of commissioners of any watershed improvement commission appointed by a board of county commissioners or by the board of supervisors of any soil and water conservation district designated by a board of county commissioners to exercise authority in carrying out a county watershed improvement program, the Department of Transportation, for roads coming under its jurisdictional control, is hereby authorized to permit the intermittent closing of any secondary road within the boundaries of any watershed improvement project operated by the applicants, whenever in the judgment of the Department of Transportation it is necessary to do so, and when the secondary road will be intermittently subject to inundation by floodwaters retained by an approved watershed improvement project.

(b) Before any permit may be issued for the temporary inundation and closing of such a road, an application for such permit shall be made to the Department of Transportation by the public body having jurisdiction over the watershed improvement project. The application shall specify the secondary road involved, the anticipated frequency and duration of intermittent flooding of the secondary road involved, and shall request that a permit be granted to the applicant public body to allow the intermittent closing of the road.

(c) Upon receipt of such an application the Department of Transportation shall give public notice of the proposed action by publication once each week for two consecutive weeks in a newspaper of general circulation in the county or counties within which the proposed intermittent closing of road or roads would occur; and such notices shall contain a description of the places of beginning and

the places of ending of such intermittent closing. In addition, the Department of Transportation shall give notice to all public utilities or common carriers having facilities located within the rights-of-way of any roads being closed by mailing copies of such notices to the appropriate offices of the public utility or common carrier having jurisdiction over the affected facilities of the public utility or common carrier. Not sooner than 14 days after publication and mailing of notices, the Department of Transportation or the municipality may issue its permit with respect to such road.

(d) The Department of Transportation shall have the discretion to deny any application submitted pursuant to this section, or it may grant a permit on any condition it deems warranted. The Department, however, shall consider the use of alternate routes available during flooding of the roads, and any inconvenience to the public or temporary loss of access to business, homes and property. The Department shall have the authority to promulgate regulations for the issuance of permits under this section and it may delegate the authority for the consideration, issuance or denial of such permits to the State Highway Administrator. Any applicant granted a permit pursuant to this section shall cause suitable markers to be installed on the secondary road to advise the general public of the intermittent closing of the road or roads involved. Such markers shall be located and approved by the State Highway Administrator. (1975, c. 639, s. 1; 1977, c. 464, s. 7.1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the 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 Department of Transportation 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 statewide 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 Department of Transportation 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 Department of Transportation and each municipality.

(3) Maintenance of State Highway System by Municipalities. — Any city or town, by written contract with the Department of Transportation, may undertake to maintain, repair, improve, construct, reconstruct or widen those streets within municipal limits which form a part of the State highway system, and may also, by written contract with the Department of Transportation, undertake to install, repair and

maintain highway signs and markings, electric traffic signals and other traffic-control devices on such streets. All work to be performed by the city or town under such contract or contracts shall be in accordance with Department of Transportation standards, and the consideration to be paid by the Department of Transportation to the city or town for such work, whether in money or in services, shall be adequate to reimburse the city or town for all costs and expenses, direct or indirect, incurred by it in the performance of such work.

(4) In the event that the governing body of any municipality shall determine that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making the following improvements on streets within its corporate limits which form a part of the State highway system:

a. Construction of curbing and guttering;

b. Adding of lanes for automobile parking;

c. Bearing that portion of the cost of constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system;

d. Constructing sidewalks; provided, that no part of the funds allocated to the municipality by G.S. 136-41.1 may be expended for sidewalk purposes.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision may be financed jointly by the municipality and the Department of Transportation pursuant to a cost-sharing agreement entered into by each.

The cost of any work financed by a municipality pursuant to this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality. (1959, c. 687, s. 1; 1969, cc. 798, 978; 1973, c. 507, s. 5; 1975, c. 664, s. 3; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1975 amendment substituted "Article 10 of Chapter 160A" for "Article 9 of Chapter 160" in the last paragraph of subdivision (4).

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

As subdivision (2) was not changed by the amendment, it is not set out.

Liability of City When Maintenance Contracted. — An individual user of a street, which is part of the State highway system, who sustains personal injuries or property damage as the result of a dangerous condition of such street, cannot maintain an action for damages against a city which contracted with the Department of Transportation to repair or remove such condition and then did nothing whatsoever about it. Matternes v. City of Winston-Salem, 286 N.C. 1, 209 S.E.2d 481 (1974).

§ 136-66.2. Development of a coordinated street system. — (a) Each municipality, with the cooperation of the Department of Transportation, shall develop a comprehensive plan for a street system that will serve present and anticipated volumes of vehicular traffic in and around the municipality. The plan shall be based on the best information available including, but not limited to, population growth, economic conditions and prospects, and patterns of land development in and around the municipality, and shall provide for the safe and

effective use of streets and highways through such means as parking regulations, signal systems, and traffic signs, markings, construction and other devices. The Department of Transportation 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 Department of Transportation 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 Department of Transportation 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 Department of Transportation 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 Department of Transportation 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 Department of Transportation 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 Department of Transportation 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; 1969, c. 794, s. 3; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section.

§ 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 Department of Transportation 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 Department of Transportation and the municipality shall take into consideration:

(1) The relative importance of the project to a coordinated statewide 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 Department of Transportation 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 Department of Transportation 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 in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk." It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(d) In the absence of an agreement, the Department of Transportation 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 Department of Transportation 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 Department of Transportation.

(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; 1965, c. 867; 1967, c. 1127; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section.

§ 136-66.4. Rules and regulations; authority of municipalities. — The Department of Transportation shall have authority to adopt such rules and regulations as are necessary to carry out the responsibilities of the Department of Transportation 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; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-66.5. Improvements in urban area streets to reduce traffic congestion. — (a) The Department of Transportation is authorized to enter into contracts with municipalities for highway improvement projects which are a part of an overall plan authorized under the provisions of section 135 of Title 23 of the United States Code, the purpose of which is to facilitate the flow of traffice in urban areas. In connection with these contracts, the Department of

Transportation and the municipalities are authorized to enter into contracts for improvement projects on the municipal system of streets, and pursuant to contract with the municipalities, the Department of Transportation is authorized to construct or to let to contract the said improvement projects on streets on the municipal street system; provided that no portion of the cost of the improvements made on the municipal street system shall be paid from Department of Transportation funds except the proportionate share of funds received from the Federal Highway Administration and allocated for the purposes set out in section 135 of Title 23 of the United States Code. Pursuant to contract with the Department of Transportation, the municipalities may construct or let to contract the said improvement projects on the municipal street system and the Department of Transportation is authorized to pay over to the municipalities the proportionate share of funds received pursuant to section 135 of Title 23 of the United States Code; provided that no portion of the costs of the improvements made on the municipal street system shall be paid for from the State Highway Fund except those received from the Federal Highway Administration and allocated for the purpose set out in section 135 of Title 23 of the United States Code.

(b) The municipalities are authorized to enter into contracts with the Department of Transportation for improvement projects which are a part of an overall plan authorized under the provisions of section 135 of Title 23 of the United States Code, the purpose of which is to facilitate the flow of traffic in urban areas, on the State highway system streets within the municipalities with the approval of the Federal Highway Administration. Pursuant to contract for the foregoing improvement projects, the municipalities are authorized to construct or let to contract the said improvement projects and the Department of Transportation is authorized to reimburse the municipalities for the cost of the construction of the said improvement projects.

(c) The municipalities in which improvements are made pursuant to section 135 of Title 23 of the United States Code shall provide proper maintenance and operation of such completed projects and improvements on the municipal system streets or will provide other means for assuring proper maintenance and operation as is required by the Department of Transportation. In the event the municipality fails to maintain such project or provide for their proper maintenance, the Department of Transportation is authorized to maintain the said projects and improvements and deduct the cost from allocations to the municipalities made under the provisions of G.S. 136-41.1. (1969, c. 794, s. 1; 1973, c. 507, ss. 5, 19; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads. — All those portions of the public road system of the State which have not been taken over and placed under maintenance or which have been abandoned by the Department of Transportation, but which remain open and in general use as a necessary means of ingress to and egress from the dwelling house of one or more families, and all those roads that have been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the Department of Human Resources, and all other roads or streets or portions of roads or streets

whatsoever outside of the boundaries of any incorporated city or town in the State which serve a public use and as a means of ingress or egress for one or more families, regardless of whether the same have ever been a portion of any State or county road system, are hereby declared to be neighborhood public roads and they shall be subject to all of the provisions of G.S. 136-68, 136-69 and 136-70 with respect to the alteration, extension, or discontinuance thereof, and any interested party is authorized to institute such proceeding, and in lieu of personal service with respect to this class of roads, notice by publication once a week in any newspaper published in said county, or in the event there is no such newspaper, by posting at the courthouse door and three other public places, shall be deemed sufficient: Provided, that this definition of neighborhood public roads shall not be construed to embrace any street, road or driveway that serves an essentially private use, and all those portions and segments of old roads, formerly a part of the public road system, which have not been taken over and placed under maintenance and which have been abandoned by the Department of Transportation and which do not serve as a necessary means of ingress to and egress from an occupied dwelling house are hereby specifically excluded from the definition of neighborhood public roads, and the owner of the land, burdened with such portions and segments of such old roads, is hereby invested with the easement or right-of-way for such old roads heretofore existing.

Upon request of the board of county commissioners of any county, the Department of Transportation is permitted, but is not required, to place such neighborhood public roads as above defined in a passable condition without incorporating the same into the State or county system, and without becoming obligated in any manner for the permanent maintenance thereof.

This section shall not authorize the reopening on abandoned roads of any railroad grade crossing that has been closed by order of the Department of Transportation in connection with the building of an overhead bridge or underpass to take the place of such grade crossing. (1929, c. 257, s. 1; 1933, c. 302; 1941, c. 183; 1949, c. 1215; 1957, c. 65, s. 11; 1969, c. 982; 1973, c. 476, s. 138; c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

Section does not provide for the establishment of a cartway for a home. See opinion of Attorney General to Bessie J. Cherry, Clerk of Superior Court, Beaufort County, 46 N.C.A.G. 222 (1977).

Applied in Yount v. Lowe, 288 N.C. 90, 215 S.E.2d 563 (1975).

§ 136-69. Cartways, tramways, etc., laid out; procedure.

Section does not provide for the establishment of a cartway for a home. See opinion of Attorney General to Bessie J. Cherry, Clerk of Superior Court, Beaufort County, 46 N.C.A.G. 222 (1977).

Applied in Yount v. Lowe, 288 N.C. 90, 215 S.E.2d 563 (1975).

§§ 136-71.1 to 136-71.5: Reserved for future codification purposes.

ARTICLE 4A.

Bicycle and Bikeway Act of 1974.

§ 136-71.6. How Article cited. — This Article may be cited as the North Carolina Bicycle and Bikeway Act of 1974. (1973, c. 1447, s. 1.)

§ 136-71.7. Definitions. — As used in this Article, except where the context clearly requires otherwise, the words and expressions defined in this section shall be held to have the meanings here given to them:

(1) Bicycle: A nonmotorized vehicle with two or three wheels tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled.
(2) Bikeway: A thoroughfare suitable for bicycles, and which may either exist within the right-of-way of other modes of transportation, such as highways, or along a separate and independent corridor.
(3) Department: North Carolina Department of Transportation.
(4) Program: North Carolina Bicycle and Bikeway Program.
(5) Secretary: The Secretary of the North Carolina Department of Transportation. (1973, c. 1447, s. 2; 1975, c. 716, s. 7; 1977, c. 1021, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in subdivision (3).

The 1977 amendment, effective Jan. 1, 1978, added subdivision (5).

§ 136-71.8. Findings. — The General Assembly hereby finds that it is in the public interest, health, safety, and welfare for the State to encourage and provide for the efficient and safe use of the bicycle; and that to coordinate plans for bikeways most effectively with those of the State and local governments as they affect roads, streets, schools, parks and other publicly owned lands, abandoned roadbeds and conservation areas, while maximizing the benefits from the use of tax dollars, a single State agency, eligible to receive federal matching funds, should be designated to establish and maintain a statewide bikeways program. The General Assembly also finds that bikeways are a bona fide highway purpose, subject to the same rights and responsibilities, and eligible for the same considerations as other highway purposes and functions. (1973, c. 1447, s. 3; 1977, c. 1021, s. 1.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, added the second sentence.

§ 136-71.9. Program development. — The Department is designated as such State agency, responsible for developing and coordinating the program. (1973, c. 1447, s. 4.)

§ 136-71.10. Duties. — The Department will:

(1) Assist and cooperate with local governments and other agencies in the development and construction of local and regional bikeway projects;

(2) Develop and publish policies, procedures, and standards for planning, designing, constructing, maintaining, marking, and operating bikeways in the State; for the registration and security of bicycles; and for the safety of bicyclists, motorists and the public;

(3) Develop bikeway demonstration projects and safety training programs;

(4) Develop and construct a State bikeway system. (1973, c. 1447, s. 5.)

§ 136-71.11. Designation of bikeways. — Bikeways may be designated along and upon the public roads. (1973, c. 1447, s. 5.)

§ 136-71.12. Funds. — The General Assembly hereby authorizes the Department to include needed funds for the program in its annual budgets for fiscal years after June 30, 1975, subject to the approval of the General Assembly. The Department is authorized to spend any federal, State, local or private funds available to the Department and designated for the accomplishment of this Article. Cities and towns may use any funds available. (1973, c. 1447, s. 6.)

§ 136-71.13. North Carolina Bicycle Committee; composition, meetings, and duties. — (a) There is hereby created a North Carolina Bicycle Committee within the Department of Transportation. The Bicycle Committee shall consist of seven members appointed by the Secretary. Members of the Committee shall receive per diem and necessary travel and subsistence expense in accordance with the provisions of G.S. 138-5. Initially, three members shall be appointed for two years, and four members for four years; thereafter each appointment shall be for four years. Upon the resignation of a member in midterm, the replacement shall be appointed for the remainder of the unexpired term. The Secretary shall make appointments to the Committee with a view to providing representation to each of the State's geographical regions and to the various types of bicycle users and interests.

(b) The Bicycle Committee shall meet in various sections of the State, not less than once in any three months, and at such other times as may be necessary to fulfill its duties. A majority of the members of the Committee shall constitute a quorum for the transaction of business. The staff of the bicycle and bikeway program shall serve the Committee, maintain the minutes of Committee meetings, research questions of bicycle transportation importance, and undertake such other activities for the Committee as may be consistent with the program's role within the Department.

(c) The Bicycle Committee shall have the following duties:

(1) To represent the interests of bicyclists in advising the Secretary on all matters directly or indirectly pertaining to bicycles and bikeways, their use, extent, location, and the other objectives and purposes of this Article;

(2) To adopt bylaws for guiding its operation, as well as an outline for pursuing a safer environment for bicycling in North Carolina;

(3) To assist the bicycle and bikeway program in the exercise of its duties within the Department; and

(4) To promote the best interests of the bicycling public, within the context of the total transportation system, to governing officials and the citizenry at large.

(d) The Secretary, with the advice of the Bicycle Committee, shall coordinate bicycle activities among the divisions of the Department, as well as between the Department of Transportation and the other departments. Further, he shall study bicycle and bikeway needs and potentials and report the findings of said

studies, with the Committee's recommendations, to the appropriate policy or legislative bodies. The Secretary shall transmit an annual report to the Governor and General Assembly on bicycle and bikeway activities within the Department, including a progress report on the implementation of this Article. (1977, c. 1021, s. 1.)

Editor's Note. — Session Laws 1977, c. 1021, s. 2, makes this section effective Jan. 1, 1978.

ARTICLE 5.

Bridges.

§ 136-72. Load limits for bridges; penalty for violations. — The Department of Transportation shall have authority to determine the safe load-carrying capacity for any and all bridges on highways on the State highway system. It shall be unlawful for any person, firm, or corporation to drive, operate or tow on any bridge on the State highway system, any vehicle or combination of vehicles with a gross weight exceeding the safe load-carrying capacity established by the Department of Transportation and posted at each end of the said bridge. Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor. (1931, c. 145, s. 16; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1975, c. 373, s. 1; 1977, c. 306; c. 464, s. 7.1.)

Editor's Note. —

The 1975 amendment rewrote this section.

The first 1977 amendment deleted "said person, firm or corporation shall so drive, operate or tow a" preceding "combination of vehicles" and inserted "the" preceding "said bridge" in the second sentence.

The second 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-76.1. Bridge replacement program. — (a) The Department of Transportation is hereby directed to replace all bridges on the State highway system containing long through truss spans over 125 feet long with less than a 12 feet clear roadway width. The Department shall initiate a bridge replacement program as soon as possible and shall complete the replacement program of all such bridges by June 30, 1980. All such bridges now on the State highway system shall be replaced except those on roads where the traffic volume is low and the elimination of the bridge would be a minimum inconvenience to the public and the replacement cannot be justified. Such bridges not replaced shall be removed and taken off the State highway system.

(b) The Environment [Environmental] Policy Act contained in Article 1 of Chapter 113A shall not apply to the bridge replacement program provided for by this section. (1975, c. 889; 1977, c. 464, s. 7.1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-81. Department of Transportation may maintain footways. — The Department of Transportation shall have the power to erect and maintain adequate footways over swamps, waters, chasms, gorges, gaps, or in any other places whatsoever, whenever said Department of Transportation shall find that such footways are necessary, in connection with the use of the highways, for the safety and convenience of the public. (1817, c. 940, ss. 1, 2, P. R.; R. C., c. 101, s. 17; Code, s. 2029; Rev., s. 2695; C. S., s. 3785; 1921, c. 2; 1931, c. 145; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

ARTICLE 6.

Ferries, etc., and Toll Bridges.

§ 136-82. Department of Transportation to establish and maintain ferries. — The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Department of Transportation, be expedient.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered. (1927, c. 223; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-82.1. Authority to insure vessels operated by Department of Transportation. — The Department of Transportation is vested with authority to purchase liability insurance, hull insurance, and protection insurance on all vessels and boats owned, leased, chartered or otherwise controlled and operated by the Department of Transportation. (1961, c. 486; 1973, c. 507, s. 5; 1977, c. 464, s. 27.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, rewrote this section.

§ 136-83: Repealed by Session Laws 1977, c. 464, s. 22, effective July 1, 1977.

§ 136-84. Department of Transportation to fix charges. — The Department of Transportation is directed, authorized and empowered to fix and determine the charges to be made by all ferries and toll bridges connecting any State highway within the State of North Carolina, which said charges shall be uniform for the same service rendered. (Ex. Sess. 1921, c. 86, s. 1; C. S., s. 3821(a); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-85. Extent of power to fix rates. — The Department of Transportation is vested with all the rights, powers and authorities granted the Utilities Commission in the hearing and fixing of rates for ferries and toll bridges now vested in it by law. (Ex. Sess. 1921, c. 86, s. 2; C. S., s. 3821(b); 1933, c. 134, s. 8; c. 172, s. 17; 1941, c. 97; 1943, c. 410; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-86. Existing rights of appeal conferred. — All rights given any firm, person or corporation in any hearing before the Utilities Commission in the fixing of rates by way of appeal shall exist in all cases of charges fixed by the Department of Transportation under and by virtue of G.S. 136-84 to 136-87. (Ex. Sess. 1921, c. 86, s. 3; C. S., s. 3821(c); 1933, c. 134, s. 8; c. 172, s. 17; 1941, c. 97; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-87. Making of excessive charges a misdemeanor; punishment. — Any person, firm or corporation who shall charge any sum greater than the amount fixed by the Department of Transportation for crossing any ferry or toll bridge connecting any State highway within the State of North Carolina, shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding the sum of one hundred dollars ($100.00) or imprisoned not exceeding six months, or both in the discretion of the court. (Ex. Sess. 1921, c. 86, s. 4; C. S., s. 3821(d); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-88. Authority of county commissioners with regard to ferries and toll bridges; rights and liabilities of owners of ferries or toll bridges not under supervision of Department of Transportation. — Subject to the provisions of G.S. 136-67, 136-99, and 153-198, the boards of commissioners of the several counties are vested, in regard to the establishment, operation, maintenance, and supervision of ferries and toll bridges on public roads not under the supervision and control of the Department of Transportation, with all the power and authority regarding ferries and toll bridges vested by law in county commissioners on the thirty-first day of March, 1931. And the owners or operators of ferries or toll bridges not under the supervision and control of the Department of Transportation shall be entitled to the same rights, powers, and privileges, and subject to the same duties, responsibilities and liabilities, to which owners or operators of ferries or toll bridges were entitled or were subject on the thirty-first day of March, 1931. (1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-89. Safety measures; guard chains or gates. — Each and every person, firm or corporation, owning or operating a public ferry upon any sound, bay, river, creek or other stream, shall have securely affixed and attached thereto, at each end of the same, a detachable steel or iron chain, or in lieu thereof a steel or iron gate, and so affixed and arranged that the same shall be closed or fastened across the opposite end from the approach, whenever any motor vehicle, buggy, cart, wagon, or other conveyance shall be driven upon or shall enter upon the same; and shall be securely fastened or closed at each end of the ferry after such motor vehicle, buggy, cart, wagon, or other conveyance shall have been driven or shall have entered upon the same. And the said gates or chains shall remain closed or fastened, at each end, until the voyage across the stream upon which said ferry is operated shall have been completed. The Department of Transportation, as to ferries under its supervision, and the respective boards of county commissioners, as to other ferries, shall fix and determine a standard weight or size of chain, and a standard size, type, or character of gate, for use by said ferries, leaving optional with the said owner or operator the use of chains or gates.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor. (1923, c. 133; C. S., ss. 3825(a), 3825(b), 3825(c); 1927, c. 223; 1931, c. 145, s. 38; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

ARTICLE 6C.

State Toll Bridges and Revenue Bonds.

§§ 136-89.31 to 136-89.47: Repealed by Session Laws 1977, c. 464, s. 22, effective July 1, 1977.

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.49. Definitions. — When used in this Article:

(1) "Department" means the Department of Transportation.

(2) "Controlled-access facility" means a State highway, or section of State highway, especially designed for through traffic, and over, from or to which highway owners or occupants of abutting property, or others, shall have only a controlled right or easement of access.

(3) "Frontage road" means a way, road or street which is auxiliary to and located on the side of another highway, road or street for service to abutting property and adjacent areas and for the control of access to such other highway, road or street. (1957, c. 993, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department" for "Board" and "Department of Transportation" for "Board of Transportation."

Quoted in North Carolina State Hwy. Comm'n v. Mills Mfg. Co., 24 N.C. App. 478, 211 S.E.2d 460 (1975).

§ 136-89.50. Authority to establish controlled-access facilities. — The Department of Transportation may designate, establish, abandon, improve, construct, maintain and regulate controlled-access facilities as a part of the State highway system, National System of Interstate Highways, and Federal Aid Primary System whenever the Department of Transportation determines that traffic conditions, present or future, justify such controlled-access facilities, or the abandonment thereof. (1957, c. 993, s. 3; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

Equal protection clause of the Fourteenth Amendment does not operate to prohibit the State Department of Transportation from establishing a controlled-access facility over one tract of land unless it also creates such facilities over every other tract which might be somewhat similarly situated. North Carolina State Hwy. Comm'n v. Mills Mfg. Co., 24 N.C. App. 478, 211 S.E.2d 460, appeal dismissed, 286 N.C. 722, 213 S.E.2d 722 (1975).

State Department of Transportation must be accorded a wide latitude in making a determination that traffic conditions, present or future, justify creating a controlled-access facility in one place and not in another. North Carolina State Hwy. Comm'n v. Mills Mfg. Co., 24 N.C. App. 478, 211 S.E.2d 460, appeal dismissed, 286 N.C. 722, 213 S.E.2d 722 (1975).

§ 136-89.51. Design of controlled-access facility. — The Department of Transportation is authorized so to design any controlled-access facility and so to regulate, restrict, or prohibit access as best to serve the traffic for which such facility is intended. In this connection the Department of Transportation is authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, or stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices. No person shall have any right of ingress or egress to, from or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time by the Department of Transportation. (1957, c. 993, s. 4; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-89.52. Acquisition of property and property rights. — For the purposes of this Article, the Department of Transportation may acquire private or public property and property rights for controlled-access facilities and service or frontage roads, including rights of access, air, view and light, by gift, devise, purchase, or condemnation in the same manner as now or hereafter authorized by law to acquire such property or property rights in connection with highways. The property rights acquired under the provisions of this Article may be in fee simple or an appropriate easement for right-of-way in perpetuity. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or frontage road in connection therewith, the Department of Transportation may, in its discretion, with the consent of the

landowner, acquire an entire lot, parcel, or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, parcel, or tract is not immediately needed for the right-of-way proper.

Along new controlled-access highway locations, abutting property owners shall not be entitled to access to such new locations, and no abutter's easement of access to such new locations shall attach to said property. Where part of a tract of land is taken or acquired for the construction of a controlled-access facility on a new location, the nature of the facility constructed on the part taken, including the fact that there shall be no direct access thereto, shall be considered in determining the fair market value of the remaining property immediately after the taking. (1957, c. 993, s. 5; 1969, c. 946; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

First Sentence Does Not Create Right of View in Landowner. — The first sentence of this section is a grant of authority to the Department of Transportation to acquire an easement over or title to property not actually needed for roadbed, but needed to prevent blind intersections of highways or other hazardous situations. This sentence of the statute does not create a right of view or sight distance in individual landowners to and from their land nor does it suggest that an individual landowner has a right of view or sight distance for which compensation must be paid. North Carolina State Hwy. Comm'n v. English, 20 N.C. App. 20, 200 S.E.2d 429 (1973).

But Not Where He Is Provided, etc. —

The last sentence of the second paragraph of this section, when read in conjunction with the first sentence of said paragraph, contemplates a situation where the remaining property abuts the new controlled-access highway. Where defendants are not denied access to a highway or roadway which abuts their property, the trial judge need not instruct the jury in accordance with the second paragraph. North Carolina State Hwy. Comm'n v. English, 20 N.C. App. 20, 200 S.E.2d 429 (1973).

Failure to Establish Facilities over Similar Tracts. — When a controlled-access facility is created by the Department of Transportation, the fact that such a facility has been established over one tract of land, but like facilities have not been established over other tracts similarly situated, must be taken into account in arriving at just compensation. North Carolina State Hwy. Comm'n v. Mills Mfg. Co., 24 N.C. App. 478, 211 S.E.2d 460, appeal dismissed, 286 N.C. 722, 213 S.E.2d 722 (1975).

§ 136-89.53. New and existing facilities; grade crossing eliminations. — The Department of Transportation may designate and establish controlled-access highways as new and additional facilities or may designate and establish an existing street or highway as included within a controlled-access facility. When an existing street or highway shall be designated as and included within a controlled-access facility the owners of land abutting such existing street or highway shall be entitled to compensation for the taking of or injury to their easements of access. The Department of Transportation shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing State highways and county roads, and city and town streets, by grade separation or frontage road, or by closing off such roads and streets, or other public ways at the right-of-way boundary line of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade. No street or [of] any city or town and no State highway, county road, or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the Department of Transportation. Such consent and approval shall be given only if the public interest shall be served thereby. (1957, c. 993, s. 6; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

Access Cannot Be Taken, etc. —
The second sentence of this section applies where an existing street or highway is designated a controlled-access facility thereby depriving a landowner of access from his property which he once had. North Carolina State Hwy. Comm'n v. English, 20 N.C. App. 20, 200 S.E.2d 429 (1973).

§ 136-89.54. Authority of local units to consent. — The Department of Transportation, as the highway authority of the State, and the governing body of any county, city or town are authorized, after a public hearing to be held in the county affected, to enter into agreements with each other, and the Department of Transportation is authorized to enter into agreements with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulations, or vacation of controlled-access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this Article. (1957, c. 993, s. 7; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-89.55. Local service roads. — In connection with the development of any controlled-access facility the Department of Transportation is authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service or frontage roads and streets or to designate as local service or frontage roads and streets any existing road or street, and to exercise jurisdiction over service or frontage roads in the same manner as is authorized over controlled-access facilities under the terms of this Article, if in its opinion such local service or frontage roads and streets are necessary or desirable; provided, however that after a local service or frontage road has been established, the same shall not be vacated or abandoned in such a manner as to reduce access to the facility without the consent of the abutting property owners or the payment of just compensation, so long as the controlled-access facility is maintained as such facility, and the Department of Transportation shall not have any authority to control or restrict the right of access of abutting property owners from their property to such local service or frontage roads or streets without the property owners' consent or the payment of just compensation, except such authority as the Department of Transportation has with respect to primary and secondary roads under the police power. Such local service or frontage roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable. (1957, c. 993, s. 8; 1969, c. 795; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-89.56. Commercial enterprises. — No commercial enterprises or activities shall be authorized or conducted by the Department of Transportation, or the governing body of any city or town, within or on the property acquired for or designated as a controlled-access facility, as defined in this Article. In order to permit the establishment of adequate fuel and other service facilities by private owners or their lessees for the users of a controlled-access facility, the Department of Transportation shall permit access to service or frontage

roads within the publicly owned right-of-way of any controlled-access facility established or designated as provided in this Article, at points which, in the opinion of the Department of Transportation, will best serve the public interest. The location of such fuel and other service facilities may be indicated to the users of the controlled-access facilities by appropriate signs, the size, style, and specifications of which shall be determined by the Department of Transportation. (1957, c. 993, s. 9; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities. — On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access facilities it shall be unlawful for any person:

(1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on said highways.

(2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on said highways.

(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.

(4) To drive any vehicle into the main travel lanes or lanes of connecting ramps or interchanges except through an opening or connection provided for that purpose by the Department of Transportation.

(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.

(7) Notwithstanding any other subdivision of this section, a member of the State Highway Patrol may cross the median of a divided highway when he has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the patrol member has reasonable grounds to believe that his presence is immediately required at a location which would necessitate his crossing a median of a divided highway for this purpose.

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 60 days or by both such fine and imprisonment, in the discretion of the court. (1959, c. 647; 1965, c. 474, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; c. 731, s. 2.)

Cross Reference. — See § 20-140.3.

Editor's Note. —
The first 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

The second 1977 amendment added subdivision (7).

§ 136-89.59. Highway rest area refreshments. — All civic, nonprofit, or charitable corporations and organizations are authorized to serve nonalcoholic refreshments to motorists at rest areas and welcome centers located on control-access facilities in accordance with the following conditions:

(1) Thirty-day permits shall be issued without cost by the Highway Division Engineer. Permits shall be subject to revocation by the State Highway Administrator for violations of this section.
(2) The activity must be carried on solely within the safety rest area free from any ramp or other service used for the movement of vehicles.
(3) The activity must be conducted for the express purpose of improving the safety of highway travel and the advertisement of any product by any organization shall not be permitted.
(4) The refreshment and any other service offered must be free of charge to the motorist and solicitation of contributions, donations, etc., shall not be permitted.
(5) Signs shall be displayed by the corporation or organization, and the Board of Transportation is hereby authorized to promulgate rules and regulations governing the size, content and location of such signs. (1973, c. 1346.)

Editor's Note. — The section originally codified as § 136-89.59 was repealed by Session Laws 1971, c. 882, s. 4.

ARTICLE 7.

Miscellaneous Provisions.

§ 136-90. Obstructing highways and roads misdemeanor.

Cited in State v. Graham, 32 N.C. App. 601, 233 S.E.2d 615 (1977).

§ 136-93. Openings, structures, pipes, trees, and issuance of permits. — No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the Department of Transportation in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the Department of Transportation or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed, and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Department of Transportation, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed

sufficient by the Department of Transportation or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a State road or State highway, or placing any structure thereon, or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the provisions of this section, shall be guilty of a misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law. (1921, c. 2, s. 13; 1923, c. 160, s. 2; C. S., s. 3846(u); 1933, c. 172, s. 17; 1943, c. 410; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-97. Responsibility of counties for upkeep, etc., terminated. — The board of county commissioners or other road-governing bodies of the various counties in the State are hereby relieved of all responsibility or liability for the upkeep or maintenance of any of the roads or bridges thereon constituting the State highway system, after the same shall have been taken over, and the control thereof assumed by the Department of Transportation. (1921, c. 2, s. 50; C. S., s. 3846(dd); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, ss. 5, 20; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts. — From and after the first day of July, 1931, no county or road district by authority of any public, public-local, or private act shall levy any taxes for the maintenance, improvement, reconstruction, or construction of any of the public roads in the various and several counties of the State, nor shall any county, through the board of commissioners thereof or the highway commission, nor shall any district or township highway commission, issue or sell or enter into any contract to issue or sell any bonds heretofore authorized to be issued and sold, but unissued and unsold, for the purpose of obtaining money with which to improve, maintain, reconstruct, or construct roads, except for the purpose of discharging obligations entered into prior to the ratification of this section, and all acts authorizing the board of county commissioners, the county highway commissions, district highway or township commissions, to issue and sell bonds for the purpose aforesaid, are hereby amended so as to conform to this section. No board of county commissioners nor county highway commission, nor district nor township highway commission from and after the passage of this section shall enter into any contract to build or construct roads in the various and several counties except for such projects as can be completed and paid for prior to July 1, 1931. All contracts heretofore entered into by any county through the board of county commissioners, county highway commission, and all contracts heretofore entered into by any district or township highway commission which shall be incomplete on July 1, 1931, shall be taken over by the Department of Transportation and completed by the Department of Transportation by the use of money and funds applicable thereto, by the terms of the said contracts.

Nothing in this section or in any section of Chapter 145 of the Public Laws of 1931 that may appear in this Code shall be construed to prohibit the levying of taxes authorized by law for the payment of interest or principal on outstanding bonds or other evidences of debt lawfully issued. Any county or road district which has heretofore issued bonds or other evidences of debt by authority of law for road improvement purposes may refund said bonds or other evidences of debt under and pursuant to the laws of the State of North Carolina relative thereto. (1931, c. 145, s. 35; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-102. Billboard obstructing view at entrance to school, church or public institution on public highway. — (a) It shall be unlawful for any person, firm, or corporation to construct or maintain outside the limits of any city or town in this State any billboard larger than six square feet at or nearer than 200 feet to the point where any walk or drive from any school, church, or public institution located along any highway enters such highway except under the following conditions:

(1) Such billboard is attached to the side of a building or buildings which are or may be erected within 200 feet of any such walk or drive and the attachment thereto causes no additional obstruction of view.
(2) A building or other structure is located so as to obstruct the view between such walk or drive and such billboard.
(3) Such billboard is located on the opposite side of the highway from the entrance to said walk or drive.

(b) Any person, firm, or corporation convicted of violating the provisions of this section shall be guilty of a misdemeanor and punished by a fine of ten dollars ($10.00), and each day that such violation continues shall be considered a separate offense. (1947, c. 304, ss. 1, 2; 1977, c. 464, s. 7.1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-102.3. Filing record of results of test drilling or boring with Secretary of Administration and Secretary of Natural Resources and Community Development. — Any person, firm or corporation making any test drilling or boring upon any public land, owned or controlled by the State of North Carolina shall, forthwith after completion, file a complete record of the results of the test drilling or boring with the Secretary of Administration and with the Secretary of Natural Resources and Community Development, of each test hole bored or drilled. Such records filed shall become a matter of public record. Provided, that after exploratory drilling and boring has been completed, and a lease or contract has been executed for operation, production or development of the area, the results of test drillings or borings made incidental to the operation, production or development of the area under lease or contract shall not be subject to the provisions of G.S. 136-102.2 to 136-102.4 unless otherwise provided in such lease or contract. (1967, c. 923, s. 2; 1973, c. 1262, s. 86; 1975, c. 879, s. 46; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" in the first sentence.

The 1975 amendment, effective July 1, 1975,

substituted "Secretary of Administration" for "Director of the Department of Administration" in the first sentence.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 136-102.5. Signs on fishing bridges. — When requested to do so by any county or municipality that has enacted an ordinance under G.S. 153-9(66) and G.S. 160-200(47) regulating or prohibiting fishing on any bridge of the North Carolina State highway system, the Department of Transportation shall erect signs on such bridges indicating the prohibition or regulation of the ordinance enacted under G.S. 153-9(66) and G.S. 160-200(47). (1971, c. 690, s. 5; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers. — (a) The owner of a tract or parcel of land which is subdivided from and after October 1, 1975, into two or more lots, building sites, or other divisions for sale or building development for residential purposes, where such subdivision includes a new street or the changing of an existing street, shall record a map or plat of the subdivision with the register of deeds of the county in which the land is located. The map or plat shall be recorded prior to any conveyance of a portion of said land, by reference to said map or plat.

(b) The right-of-way of any new street or change in an existing street shall be delineated upon the map or plat with particularity and such streets shall be designated to be either public or private. Any street designated on the plat or map as public shall be conclusively presumed to be an offer of dedication to the public of such street.

(c) The right-of-way and design of streets designated as public shall be in accordance with the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system. If a municipal or county subdivision control ordinance is in effect in the area proposed for subdivision, the map or plat required by this section shall not be recorded by the register of deeds until after it has received final plat approval by the municipality or county, and until after it has received a certificate of approval by the Division of Highways as herein provided as to those streets regulated in subsection (g). The certificate of approval may be issued by a district engineer of the Division of Highways of the Department of Transportation.

(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The certificate of approval shall not be deemed an acceptance of the dedication of such streets on the subdivision plat or map. Final acceptance by the Division of Highways of such public streets and placing them

on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation.

(e) No person or firm shall place or erect any utility in, over, or upon the existing or proposed right-of-way of any street in a subdivision to which this section applies, except in accordance with the Division of Highway's policies and procedures for accommodating utilities on highway rights-of-way, until the Division of Highways has given written approval of the location of such utilities. Written approval may be in the form of exchange of correspondence until such times as it is requested to add the street or streets to the State system, at which time an encroachment agreement furnished by the Division of Highways must be executed between the owner of the utility and the Division of Highways. The right of any utility placed or located on a proposed or existing subdivision public street right-of-way shall be subordinate to the street right-of-way, and the utility shall be subject to regulation by the Department of Transportation. Utilities are defined as electric power, telephone, television, telegraph, water, sewage, gas, oil, petroleum products, steam, chemicals, drainage, irrigation, and similar lines. Any utility installed in a subdivision street not in accordance with the Division of Highways accommodation policy, and without prior approval by the Division of Highways, shall be removed or relocated at no expense to the Division of Highways.

(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer and seller as a public street, the developer and seller shall certify that the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. If the street is designated by the developer and seller as a private street, the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

(g) The provisions of this section shall apply to all subdivisions located outside municipal corporate limits. As to subdivisions inside municipalities, this section shall apply to all proposed streets or changes in existing streets on the State highway system as shown on the comprehensive plan for the future development of the street system made pursuant to G.S. 136-66.2, and in effect at the date of approval of the map or plat.

(h) The provisions of this section shall not apply to any subdivision that consists only of lots located on Lakes Hickory, Norman, Mountain Island and Wylie which are lakes formed by the Catawba River which lots are leased upon October 1, 1975. No roads in any such subdivision shall be added to the State maintained road system without first having been brought up to standards established by the Board of Transportation for inclusion of roads in the system, without expense to the State. Prior to entering any agreement or any conveyance with any prospective buyer of a lot in any such subdivision, the seller shall

prepare and sign, and the buyer shall receive and sign an acknowledgment of receipt of a statement fully and completely disclosing the status of and the responsibility for construction and maintenance of the road upon which such lot is located.

(i) The purpose of this section is to insure that new subdivision streets described herein to be dedicated to the public will comply with the State standards for placing subdivision streets on the State highway system for maintenance, or that full and accurate disclosure of the responsibility for construction and maintenance of private streets be made. This section shall be construed and applied in a manner which shall not inhibit the ability of public utilities to satisfy service requirements of subdivisions to which this section applies.

(j) A willful violation of any of the provisions of this section shall be a misdemeanor. (1975, c. 488, s. 1; 1977, c. 464, ss. 7.1, 8.)

Editor's Note. — Session Laws 1975, c. 488, s. 2, makes the act effective Oct. 1, 1975.

The 1977 amendment, effective July 1, 1977, substituted "Board of Transportation" for "Secondary Roads Council" in the first sentence of subsection (c), in the second and fourth sentences of subsection (d), in the third sentence of subsection (f), and in the second sentence of subsection (h). The amendment also substituted "Department of Transportation" for "Board of Transportation" in the third sentence of subsection (e).

The section does not apply to subdivisions which were platted and recorded prior to October 1, 1975, the effective date of the section. This section is not applicable to the sale of a one-acre building site as a separate transaction from a 100-acre farm tract unless it involves the laying out or the dedication of a new street or the changing of an existing street. Therefore, if the subdivision only contains private streets, the Register of Deeds may record the plat without any certification by the Department of Transportation. Opinion of Attorney General to Mr. Richard S. Jones, Jr., 19 November 1975.

ARTICLE 9.

Condemnation.

§ 136-103. Institution of action and deposit. — In case condemnation shall become necessary the Department of Transportation 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 Department of Transportation. 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 Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can 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 Department of Transportation 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 Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can 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 Department of Transportation 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 Department of Transportation 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 Department of Transportation 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 G.S. 136-105 of this Chapter. (1959, c. 1025, s. 2; 1961, c. 1084, s. 1; 1963, c. 1156, s. 1; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Cross Reference. —

As to proration of the property tax liability of the owner of land condemned by the State or any municipality, see § 40-10.6.

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section.

Applied in City of Durham v. Manson, 285 N.C. 741, 208 S.E.2d 662 (1974); City of Greensboro v. Irvin, 25 N.C. App. 661, 214 S.E.2d 196 (1975); City of Durham v. Lyckan Dev. Corp., 26 N.C. App. 210, 215 S.E.2d 814 (1975).

§ 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 hereof shall vest in the Department of Transportation and the judge shall enter such orders in the cause as may be required to place the Department of Transportation in possession, and said land shall be deemed to be condemned and taken for the use of the Department of Transportation 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.

Where there is a life estate and a remainder either vested or contingent, in lieu of the investment of the proceeds of the amount determined and awarded as just

compensation to which the life tenant would be entitled to the use during the life estate, the court may in its discretion order the value of said life tenant's share during the probable life of such life tenant be ascertained as now provided by law and paid directly to the life tenant out of the final award as just compensation established by the judgment in the cause and the life tenant may have the relief provided for in G.S. 136-105.

On and after July 1, 1961, the Department of Transportation, 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 Department of Transportation shall record a supplemental memorandum of action. The memorandum of action shall contain

(1) The names of those persons who the Department of Transportation 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 Department of Transportation under the provisions of this Article prior to July 1, 1961, the Department of Transportation 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 Department of Transportation 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; 1973, c. 507, s. 5; 1975, c. 522, s. 1; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1975 amendment added the present second paragraph.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section.

Session Laws 1975, c. 522, s. 2, provides: "This act shall apply to all pending condemnation proceedings in which the final award or judgment has not been entered and shall become effective upon ratification." The act was ratified June 10, 1975.

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

§ 136-105. Disbursement of deposit; serving copy of disbursing order on Department of Transportation. — 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 Department of Transportation 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 Secretary of Transportation, or such other process agents as may be designated by the

Department of Transportation. (1959, c. 1025, s. 2; 1961, c. 1084, s. 3; 1965, c. 55, s. 14; 1969, c. 649; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 26.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" near the beginning and again near the end of the second paragraph and substituted "Secretary of Transportation" for "Chairman of the Board of Transportation" near the middle of the second paragraph.

Cited in City of Durham v. Manson, 21 N.C. App. 161, 204 S.E.2d 41 (1974).

§ 136-106. Answer, reply and plat. — (a) Any person whose property has been taken by the Department of Transportation 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 Department of Transportation, or such other process agents as may be designated by the Department of Transportation, 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 Department of Transportation may, however, file a reply within 30 days from receipt of a copy of the answer.

(c) The Department of Transportation, within 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 Department of Transportation shall not be required to file a map or plat in less than six 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; 1965, c. 55, s. 15; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 28.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Chairman of the Board of Transportation" near the beginning of the first sentence of subsection (b) and substituted "Department of Transportation" for "Board of Transportation" throughout the rest of the section.

§ 136-107. Time for filing answer. — Any person named in and served with a complaint and declaration of taking shall have 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. Provided, however, at any time prior to the entry of the final judgment the judge may, for good cause shown and after notice to the plaintiff, extend the time for filing answer for 30 days. (1959, c. 1025, s. 2; 1973, c. 507, s. 5; 1975, c. 625.)

Editor's Note. —
The 1975 amendment substituted the present last sentence for a provision which read: "For good cause shown and upon notice to the Board of Transportation the judge may within the initial 12 months' period extend the time for filing answer for a period not to exceed an additional six months."

Applied in City of Greensboro v. Irvin, 25 N.C. App. 661, 214 S.E.2d 196 (1975); City of Durham v. Lyckan Dev. Corp., 26 N.C. App. 210, 215 S.E.2d 814 (1975); Board of Transp. v. Williams, 31 N.C. App. 125, 229 S.E.2d 37 (1976).

§ 136-108. Determination of issues other than damages. — After the filing of the plat, the judge, upon motion and 10 days' notice by either the Department of Transportation 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; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

Compensation for Adjacent Traffic Islands. — The trial court does have authority under this section to pass upon the question whether defendants are entitled to compensation because of the construction of traffic islands adjacent to their property fronting a highway. State Hwy. Comm'n v. Rose, 31 N.C. App. 28, 228 S.E.2d 664 (1976).

Applied in Lautenschlager v. Board of Transp., 25 N.C. App. 228, 212 S.E.2d 551 (1975).

§ 136-109. Appointment of commissioners. — (a) Upon request of the owner in the answer, or upon motion filed by either the Department of Transportation or the owner within 60 days after the filing of answer, the clerk shall appoint, after the determination of other issues as provided by G.S. 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 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 .....
Commissioners 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 Department of Transportation 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 30 days after the filing of the report, either the Department of Transportation 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 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 Department of Transportation 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 G.S. 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; 1973, c. 108, s. 85; c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action. — Any person whose land or compensable interest therein has been taken by an intentional or unintentional act or omission of the Department of Transportation and no complaint and declaration of taking has been filed by said Department of Transportation may, within 24 months of the date of the taking of the affected property or interest therein or the completion of the project involving the taking, whichever shall occur later, file a complaint in the superior court setting forth the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have estates or interests in the said real estate and if any such persons are under a legal disability, it must be so stated, together with a statement as to any encumbrances on said real estate; said complaint shall further allege with particularity the facts which constitute said taking together with the dates that they allegedly occurred; said complaint shall describe the property allegedly owned by said parties and shall describe the area and interests allegedly taken. Upon the filing of said complaint summons shall issue and together with a copy of said complaint be served on the Secretary of Transportation. The allegations of said complaint shall be deemed denied; however, the Department of Transportation within 60 days of service of summons and complaint may file answer thereto, and if said taking is admitted by the Department of Transportation, 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 G.S. 136-105 of this Chapter. If a taking is admitted, the Department of Transportation shall, within 90 days of the filing of the answer to the complaint, file a map or plat of the land taken. The procedure

hereinbefore set out shall be followed for the purpose of determining all matters raised by the pleadings and the determination of just compensation.

The plaintiff at the time of filing of the complaint shall record a memorandum of action with the register of deeds in all counties in which the land involved therein is located, said memorandum to be recorded among the land records of said county. The memorandum of action shall contain

(1) The names of those persons who the plaintiff is informed and believes may have or claim to have an interest in said lands and who are parties to said action;

(2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;

(3) A statement of the estate or interest in said land allegedly taken for public use; and

(4) The date on which plaintiff alleges the taking occurred, the date on which said action was instituted, the county in which it was instituted, and such other reference thereto as may be necessary for the identification of said action. (1959, c. 1025, s. 2; 1961, c. 1084, s. 6; 1963, c. 1156, s. 8; 1965, c. 514, ss. 1, 1½; 1971, c. 1195; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 29.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Secretary of Transportation" for "Director of Highways" in the second sentence of the first paragraph and substituted "Department of Transportation" for "Board of Transportation" throughout the first paragraph.

Legal Remedy When Injunction Unavailable. — Where plaintiffs fail to show substantial or irreparable harm which would entitle them to an injunction prohibiting the State Department of Transportation from removing the remaining portion of an old causeway which is plaintiffs' only means of vehicular ingress to and egress from their property, plaintiffs may resort to their legal remedy under this section to recover just compensation for the taking of their property rights. Frink v. North Carolina Bd. of Transp., 27 N.C. App. 207, 218 S.E.2d 713 (1975).

Applied in Lautenschlager v. Board of Transp., 25 N.C. App. 228, 212 S.E.2d 551 (1975); Guyton v. North Carolina Bd. of Transp., 30 N.C. App. 87, 226 S.E.2d 175 (1976).

§ 136-112. Measure of damages.

Admissible Evidence. —

It is permissible for a witness to use a map, diagram or photograph of a place or object to illustrate his testimony and make it more intelligible to the court and jury. These aids have been particularly helpful in condemnation cases in providing the court and jury with better understanding with respect to the subject property before and after the taking. State Hwy. Comm'n v. Rose, 31 N.C. App. 28, 228 S.E.2d 664 (1976).

Applied in Board of Transp. v. Harvey, 28 N.C. App. 327, 220 S.E.2d 815 (1976).

§ 136-115. Definitions. — For the purpose of this Article

(1) The word "judge" shall mean the resident judge of the superior court in the district where the cause is pending, or special judge residing in said district, or the judge of the superior court assigned to hold the courts of said district or the emergency or special judge holding court in the county where the cause is pending.

(2) The words "person," "owner," and "party" shall include the plural; the word "person" shall include a firm or public or private corporation, and the word "Department" shall mean the Department of Transportation. (1959, c. 1025, s. 2; 1961, c. 1084, s. 7; 1965, c. 422; 1973, c. 507, s. 5; 1975, c. 19, s. 47; 1977, c. 464, s. 30.)

Editor's Note. —
The 1975 amendment corrected an error in the 1973 amendatory act by substituting "word" for "words" preceding "Board" the first time "Board" appears in subdivision (2).

The 1977 amendment substituted "the word 'Department' shall mean the Department of Transportation" for "the word 'Board' shall mean the Board of Transportation" at the end of subdivision (2).

§ 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 of interest acquired by the Department of Transportation 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; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-117. Payment of compensation. — If there are adverse and conflicting claimants to the deposit made into the court by the Department of Transportation 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 Department of Transportation 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; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-118. Agreements for entry. — The provisions of this Article shall not prevent the Department of Transportation and the owner from entering into a written agreement whereby the owner agrees and consents that the Department of Transportation may enter upon his property without filing the complaint and declaration of taking and depositing estimated compensation as herein provided and the Department of Transportation 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; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-119. Costs and appeal. — The Department of Transportation 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.

The court having jurisdiction of the condemnation action instituted by the Department of Transportation to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the Department of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the Department of Transportation.

The judge rendering a judgment for the plaintiff in a proceeding brought under G.S. 136-111 awarding compensation for the taking of property, shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding. (1959, c. 1025, s. 2; 1971, c. 1102, s. 1; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-120. Entry for surveys. — The Department of Transportation 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 Department of Transportation 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 G.S. 136-111 of this Chapter to recover for such damage. (1959, c. 1025, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-121. Refund of deposit. — In the event the amount of the final judgment is less than the amount deposited by the Department of Transportation pursuant to the provisions of this Article, the Department of Transportation 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 Department of Transportation shall be entitled to a judgment for said sum against the person or persons having received said deposit. (1959, c. 1025, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-121.1. Reimbursement of owner for taxes paid on condemned property. — A property owner whose property is totally taken in fee simple by any condemning agency (as defined in G.S. 133-7(1)) exercising the power of eminent domain, under this Chapter or any other statute or charter provision, shall be entitled to reimbursement from the condemning agency of the pro rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the agency, or the effective date of possession of such real property, whichever is earlier. (1975, c. 439, s. 1.)

Editor's Note. — Session Laws 1975, c. 439, s. 2, makes the act effective Jan. 1, 1976.

ARTICLE 10.

Preservation, etc., of Scenic Beauty of Areas along Highways.

§ 136-122. Legislative findings and declaration of policy. — The General Assembly finds that the rapid growth and the spread of urban development along and near the State highways is encroaching upon or eliminating many areas having significant scenic or aesthetic values, which if restored, preserved and enhanced would promote the enjoyment of travel and the protection of the public investment in highways within the State and would constitute important physical, aesthetic or economic assets to the State. It is the intent of the General Assembly in enacting this statute to provide a means whereby the Department of Transportation may acquire the fee or any lesser interest or right in real property in order to restore, preserve and enhance natural or scenic beauty of areas traversed by the highways of the State highway system.

The General Assembly hereby declares that it is a public purpose and in the public interest of the people of North Carolina, to expend public funds, in connection with the construction, reconstruction or improvement of State highways, for the acquisition of the fee or any lesser interest in real property in the vicinity of public highways forming a part of the State highway system, in order to restore, preserve and enhance natural or scenic beauty. The General Assembly hereby finds, determines and declares that this Article is necessary for the immediate preservation and promotion of public convenience, safety and welfare. (1967, c. 1247, s. 1; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-123. Restoration, preservation and enhancement of natural or scenic beauty. — The Department of Transportation is hereby authorized and empowered to acquire by purchase, exchanges or gift, the fee-simple title or any lesser interest therein in real property in the vicinity of public highways forming a part of the State highway system, for the restoration, preservation and enhancement of natural or scenic beauty; provided that no lands, rights-of-way or facilities of a public utility as defined by G.S. 62-3(23), or of an electric membership corporation or telephone membership corporation, may be acquired, except that the Department of Transportation upon payment of the full cost thereof may require the relocation of electric distribution or telephone lines or

poles; provided further, that such lands may be acquired by the Department of Transportation with the consent of the public utility or membership corporation. (1967, c. 1247, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-124. Availability of federal aid funds. — The Department of Transportation shall not be required to expend any funds for the acquisition of property under the provisions of this Article unless federal aid funds are made available for this purpose. (1967, c. 1247, s. 3; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-125. Regulation of scenic easements. — The Department of Transportation shall have the authority to promulgate rules and regulations governing the use, maintenance and protection of the areas or interests acquired under this Article. Any violation of such rules and regulations shall be a misdemeanor. (1967, c. 1247, s. 4; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

As to effective date of this Article, see Days Inn of America, Inc. v. Board of Transp., 24 N.C. App. 636, 211 S.E.2d 864, cert. denied, 287 N.C. 258, 214 S.E.2d 429 (1975).

§ 136-128. Definitions. — As used in this Article:

(0.1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(0.2) "Illegal sign" means one which was erected and/or maintained in violation of State law.

(1) "Information center" means an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as the Department of Transportation may consider desirable.

(2) "Interstate system" means that portion of the National System of Interstate and Defense Highways located within the State, as officially designated, or as may hereafter be so designated, by the Department of Transportation, or other appropriate authorities and are also so designated by interstate numbers. As to highways under construction

so designated as interstate highways pursuant to the above procedures, the highway shall be a part of the interstate system for the purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal authorities.

(2a) "Nonconforming sign" shall mean a sign which was lawfully erected but which does not comply with the provisions of State law or State rules and regulations passed at a later date or which later fails to comply with State law or State rules or regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(3) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or any other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the interstate or primary system, whether the same be permanent or portable installation.

(4) "Primary systems" means that portion of connected main highways, as now officially designated, or as may hereafter be so designated by the Department of Transportation as primary system, or other appropriate authorities and are also so designated by N.C. or U.S. numbers. As to highways under construction so designated as primary highways pursuant to the above procedures, the highway shall be a part of the primary system for purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal or State authorities.

(6) "State law" means a State constitutional provision or statute, or an ordinance, rule or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State Constitution or statute.

(7) "Unzoned area" shall mean an area where there is no zoning in effect.

(8) "Urban area" shall mean an area within the boundaries or limits of any incorporated municipality having a population of five thousand or more as determined by the latest available federal census.

(9) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity. (1967, c. 1248, s. 3; 1973, c. 507, s. 5; 1975, c. 568, ss. 1-4; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added "and are also so designated by interstate numbers" at the end of the first sentence of subdivision (2), added the second sentence of that subdivision, added "whether the same be permanent or portable installation" at the end of subdivision (3), added the language beginning "and are also so designated" at the end of the first sentence and added the second sentence of subdivision (4) and added subdivisions (0.1), (0.2), (2a) and (6) through (9).

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in subdivisions (1), (2) and (4).

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

§ 136-129. Limitations of outdoor advertising devices. — No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge of the right-of-way of the interstate or primary highways in this State so as to be visible from the main-traveled way thereof after the effective date of this Article as determined by G.S. 136-140, except the following:

(1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or

telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.

(2) Outdoor advertising which advertises the sale or lease of property upon which it is located.

(3) Outdoor advertising which advertises activities conducted on the property upon which it is located.

(4) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in areas which are zoned industrial or commercial under authority of State law.

(5) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in unzoned commercial or industrial areas. (1967, c. 1248, s. 4; 1972, c. 507, s. 5; 1975, c. 568, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "the effective date of this Article as determined by G.S. 136-140" for "July 6, 1967" in the introductory language.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in subdivisions (4) and (5).

§ 136-129.1. Limitations of outdoor advertising devices beyond 660 feet. — No outdoor advertising shall be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highways in this State outside of the urban areas so as to be visible and intended to be read from the main-traveled way except the following:

(1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.

(2) Outdoor advertising which advertises the sale or lease of property upon which it is located.

(3) Outdoor advertising which advertises activities conducted on the property upon which it is located. (1975, c. 568, s. 6.)

Editor's Note. — Session Laws 1975, c. 568, s. 16, makes the act effective July 1, 1975.

§ 136-130. Regulation of advertising. — The Department of Transportation is authorized to promulgate rules and regulations in the form of ordinances governing:

(1) The erection and maintenance of outdoor advertising permitted in G.S. 136-129,

(2) The erection and maintenance of outdoor advertising permitted in G.S. 136-129.1,

(3) The specific requirements and procedures for obtaining a permit for outdoor advertising as required in G.S. 136-133 and for the administrative procedures for appealing a decision at the agency level to refuse to grant or in revoking a permit previously issued, and

(4) The administrative procedures for appealling a decision at the agency level to declare any outdoor advertising illegal and a nuisance as pursuant to G.S. 136-134, as may be necessary to carry out the policy

of the State declared in this Article. (1967, c. 1248, s. 5; 1973, c. 507, s. 5; 1975, c. 568, s. 7; 1977, c. 464, ss. 7.1, 31.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, rewrote this section.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in the introductory paragraph and deleted the former last sentence of the section, which authorized the Board of Transportation to delegate its rule-making authority to the Secretary of Transportation.

§ 136-131. Removal of existing nonconforming advertising. — The Department of Transportation is authorized to acquire by purchase, gift, or condemnation all outdoor advertising and all property rights pertaining thereto which are prohibited under the provisions of G.S. 136-129 or 136-129.1, provided such outdoor advertising is in lawful existence on the effective date of this Article as determined by G.S. 136-140, or provided that it is lawfully erected after the effective date of this Article as determined by G.S. 136-140.

In any acquisition, purchase or condemnation, just compensation to the owner of the outdoor advertising, where the owner of the outdoor advertising does not own the fee, shall be limited to the fair market value at the time of the taking of the outdoor advertising owner's interest in the real property on which the outdoor advertising is located and such value shall include the value of the outdoor advertising.

In any acquisition, purchase or condemnation, just compensation to the owner of the fee or other interest in the real property upon which the outdoor advertising is located where said owner does not own the outdoor advertising located thereon shall be limited to the difference in the fair market value of the entire tract immediately before and immediately after the taking by the Department of Transportation of the right to maintain such outdoor advertising thereon and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration.

In any acquisition, purchase or condemnation, just compensation to the owner of the fee in the real property upon which the outdoor advertising is located, where said owner also owns the outdoor advertising located thereon, shall be limited to the fair market value of the outdoor advertising plus the difference in the fair market value of the entire tract immediately before and immediately after the taking by the Department of Transportation of the right to maintain such outdoor advertising thereon and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration. (1967, c. 1248, s. 6; 1973, c. 507, s. 5; 1975, c. 568, ss. 8-10; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, inserted "or 136-129.1" in the first paragraph, substituted "the effective date of this Article as determined by G.S. 136-140" for "July 6, 1967" in two places in that paragraph and deleted "erect and" following "the right to" near the end of the third paragraph and near the end of the fourth paragraph.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-132. Condemnation procedure. — For the purpose of this Article, the Department of Transportation shall use the procedure for condemnation of real property as provided by Article 9 of Chapter 136 of the General Statutes. (1967, c. 1248, s. 7; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-133. Permits required. — No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules and regulations promulgated by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules and regulations promulgated by the Department of Transportation thereunder. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge reasonable permit fees to defray the costs of administering the permit procedures under this Article. (1967, c. 1248, s. 8; 1973, c. 507, s. 5; 1975, c. 568, s. 11; 1977, c. 464, ss. 7.1, 32.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote this section.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in the first, third and fourth sentences, and substituted "Department of Transportation" for "Board of Transportation or the Secretary of Transportation" in the first and second sentences and for "Board of Transportation or Secretary of Transportation" near the end of the third sentence.

§ 136-134. Illegal advertising. — Any outdoor advertising erected or maintained after the effective date of this Article as determined by G.S. 136-140, in violation of the provisions of this Article or rules and regulations promulgated by the Department of Transportation, or any outdoor advertising maintained without a permit regardless of the date of erection shall be illegal and shall constitute a nuisance. The Department of Transportation or its agents shall give 30 days' notice to the owner of the illegal outdoor advertising with the exception of the owner of unlawful portable outdoor advertising for which the Department of Transportation shall give five days' notice, if such owner is known or can by reasonable diligence be ascertained, to remove the outdoor advertising or to make it conform to the provisions of this Article or rules and regulations promulgated by the Department of Transportation hereunder. The Department of Transportation or its agents shall have the right to remove the illegal outdoor advertising at the expense of the said owner if the said owner fails to act within 30 days after receipt of such notice or five days for owners of portable outdoor advertising. The Department of Transportation or its agents may enter upon private property for the purpose of removing the outdoor advertising prohibited by this Article or rules and regulations promulgated by the Department of Transportation hereunder without civil or criminal liability. Any person aggrieved by the decision declaring the outdoor advertising structure illegal shall be granted the right to appeal the decision in accordance with the terms of the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. (1967, c. 1248, s. 9; 1973, c. 507, s. 5; 1975, c. 568, s. 12; 1977, c. 464, ss. 7.1, 32.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, rewrote this section.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation or Secretary of Transportation" in the first sentence and for "Board of Transportation or the Secretary of Transportation" in the second, fourth and fifth sentences, and substituted "Department of Transportation" for "Board of Transportation" throughout the rest of the section.

§ 136-134.1. Judicial review. — Any person who is aggrieved by a final decision of the Secretary of Transportation after exhausting all administrative remedies made available to him by rules and regulations enacted pursuant to this Article is entitled to judicial review of such decision under this Article. In order to obtain judicial review of the Secretary of Transportation's decision under this Article, the person seeking review must file a petition in the Superior Court of Wake County within 30 days after written copy of the decision of the Secretary of Transportation is served upon the person seeking review. Failure to file such a petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter.

The petition shall state explicitly what exceptions are taken to the decision of the Secretary of Transportation and what relief petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by registered mail, return receipt requested, upon the Department of Transportation. Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the Department of Transportation shall transmit to the reviewing court a certified copy of the written decision.

At any time before or during the review proceeding, the aggrieved party may apply to the reviewing court for an order staying the operation of the decision of the Secretary of Transportation pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper. The review of the decision of the Secretary of Transportation under this Article shall be conducted by the court without a jury and shall hear the matter de novo pursuant to the rules of evidence as applied in the General Court of Justice. The court, after hearing the matter may affirm, reverse or modify the decision if the decision is:

(1) In violation of constitutional provisions; or
(2) Not made in accordance with this Article or rules or regulations promulgated by the Department of Transportation; or
(3) Affected by other error of law.

The party aggrieved shall have the burden of showing that the decision was violative of one of the above.

A party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the Superior Court under the rules of procedure applicable in civil cases. The appealing party may apply to the Superior Court for a stay for its final determination or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1975, c. 568, s. 13; 1977, c. 464, ss. 32, 33.)

Editor's Note. — Session Laws 1975, c. 568, s. 16, makes the act effective July 1, 1975.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation or the Secretary of Transportation" in the second sentence of the second paragraph and for "Board of Transportation or Secretary of Transportation" in subdivision (2) of the third paragraph, and substituted "Department of Transportation" for "Secretary of Transportation" in the third sentence of the second paragraph.

§ 136-135. Enforcement provisions. — Any person, firm, corporation or association placing, erecting or maintaining outdoor advertising along the interstate system or primary system in violation of this Article or rules and

regulations promulgated by the Department of Transportation shall be guilty of a misdemeanor. In addition thereto, the Department of Transportation may seek injunctive relief in the Superior Court of Wake County and require the outdoor advertising to conform to the provisions of this Article or rules and regulations promulgated pursuant hereto, or require the removal of the said illegal outdoor advertising. (1967, c. 1248, s. 10; 1973, c. 507, s. 5; 1975, c. 568, s. 14; 1977, c. 464, s. 32.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "placing, erecting or maintaining" for "placing or erecting" near the beginning of the first sentence, inserted "or rules and regulations promulgated by the Board of Transportation or Secretary of Transportation" in that sentence, inserted "or the Secretary of Transportation" near the beginning of the second sentence, substituted "of Wake County" for "of the county in which said nonconforming outdoor advertising is located" in that sentence, substituted "Article or rules" for "Article and rules" and substituted "illegal" for "nonconforming" near the end of that sentence.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation or the Secretary of Transportation" in two places.

§ 136-136. Zoning changes. — All zoning authorities shall give written notice to the Department of Transportation of the establishment or revision of any commercial and industrial zones within 660 feet of the right-of-way of interstate or primary highways. Notice shall be by registered mail sent to the offices of the Department of Transportation in Raleigh, North Carolina, within 15 days after the effective date of the zoning change or establishment. (1967, c. 1248, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-137. Information directories. — The Department of Transportation is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas and to establish information centers at safety rest areas and install signs on the right-of-way for the purpose of informing the public of facilities for food, lodging and vehicle services and of places of interest and for providing such other information as may be considered desirable. (1967, c. 1248, s. 12; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-138. Agreements with United States authorized. — The Department of Transportation is authorized to enter into agreements with other governmental authorities relating to the control of outdoor advertising in areas adjacent to the interstate and primary highway systems, including the establishment of information centers and safety rest areas, and to take action in the name of the State to comply with the terms of the agreements. (1967, c. 1248, s. 13; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-139. Alternate control. — In addition to any other control provided for in this Article, the Department of Transportation may regulate outdoor advertising in accordance with the standards provided by this Article and regulations promulgated pursuant thereto, by the acquisition by purchase, gift, or condemnation of easements or any other interests in real property prohibiting or controlling the erection and maintenance of advertising within 660 feet of the right-of-way line of the interstate and primary system of the State. (1967, c. 1248, s. 14; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-140. Availability of federal aid funds. — The Department of Transportation shall not be required to expend any funds for the regulation of outdoor advertising under this Article, nor shall the provisions of this Article, with the exception of G.S. 136-138 hereof, have any force and effect until federal funds are made available to the State for the purpose of carrying out the provisions of this Article, and the Department of Transportation has entered into an agreement with the United States Secretary of Transportation as authorized by G.S. 136-138 hereof and as provided by the Highway Beautification Act of 1965 or subsequent amendment thereto. (1967, c. 1248, s. 15; 1973, c. 507, s. 5; 1975, c. 568, s. 15; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, inserted "United States" near the end of the section.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§§ 136-140.1 to 136-140.5: Reserved for future codification purposes.

ARTICLE 11A.

Exemption and Deferment from Removal of Certain Directional Signs, Displays, and Devices.

§ 136-140.6. Declaration of policy. — Notwithstanding any other provision of law, the State of North Carolina hereby finds and declares that the removal of certain directional signs, displays, and devices, lawfully erected under State law in force at the time of their erection, which do not conform to the requirements of subsection (C) of 23 U.S.C. 131, which provide directional information about goods and services in the interest of the traveling public, and which were in existence on May 6, 1976, may work a substantial economic hardship in certain defined areas, and shall be exempt according to Section 131 United States Code and the rules and regulations promulgated pursuant thereto. (1977, c. 639.)

§ 136-140.7. Definitions. — As used in this Article: "Motorist services directional signs" means signs, displays, and devices giving directional information about goods and services in the interest of the traveling public, including but not limited to:

(1) Places of public lodging;
(2) Places where food is served to the public on a regular basis;
(3) Places where automotive fuel or emergency automotive repair services, including truck stops, are regularly available to the public;
(4) Educational institutions;
(5) Places of religious worship;
(6) Public or private recreation areas, including campgrounds, resorts and attractions, natural wonders, wildlife and water fowl refuges, and nature trials;
(7) Plays, concerts and fairs;
(8) Antiques, gift and souvenir shops;
(9) Agricultural products in a natural state, including vegetables and fruit. (1977, c. 639.)

§ 136-140.8. Exemption procedures. — The North Carolina Department of Transportation shall upon receipt of a declaration, petition, resolution, certified copy of an ordinance, or other clear direction from a board of county commissioners, municipality, county, city, provided that such resolution is not in conflict with existing statute or ordinance, that removal of motorist services directional signs would cause an economic hardship in a defined area, shall forward such declaration, resolution, or finding to the Secretary of the North Carolina Department of Transportation for inclusion as a defined hardship area qualifying for exemption pursuant to 23 U.S.C. 131 (O). Any such declaration or resolution submitted to the North Carolina Department of Transportation shall further find that such motorist service signs provided directional information about goods and services in the interest of the traveling public and shall request the retention by the State of said directional motorist services signs as defined herein. The North Carolina Department of Transportation shall thereupon comply with all regulations issued both now and hereafter by the Federal Highway Administration necessary for application for the exemption provided in 23 U.S.C. 131 (O), provided such motorist services directional signs were lawfully erected under State law at the time of their erection and were in existence on May 5, 1976. The petitioner seeking exemption of those signs defined in G.S. 136-140.2 shall furnish the information required by the United States Department of Transportation to the North Carolina Department of Transportation and the North Carolina Department of Transportation shall request exemption from the United States Department of Transportation. (1977, c. 639.)

§ 136-140.9. Deferment. — The North Carolina Department of Transportation shall adopt programs to assure that removal of directional signs, displays or devices, providing directional information about goods and services in the interest of the traveling public, not otherwise exempted by economic hardship, be deferred until July 1, 1979. (1977, c. 639.)

As to effective date of this Article, see Days Inn of America, Inc. v. Board of Transp., 24 N.C. App. 636, 211 S.E.2d 864, cert. denied, 287 N.C. 258, 214 S.E.2d 429 (1975).

ARTICLE 12.

Junkyard Control Act.

§ 136-143. Definitions. — As used in this Article:

(1) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Any establishment or place of business upon which six or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more shall be deemed to be an "automobile graveyard" within the meaning of this Article.

(2) "Interstate system" means that portion of the National System of Interstate and Defense Highways located within the State, as now officially designated, or as may hereafter be so designated as interstate system by the Department of Transportation, or other appropriate authorities. As to highways under construction so designated as interstate highways pursuant to the above procedures, the highway shall be a part of the interstate system for the purpose of this Article on the date the location of the highway has been approved finally by the appropriate federal authorities.

(3) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(4) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills. An establishment or place of business which stores or keeps for a period of 15 days or more materials within the meaning of "junk" as defined by subdivision (3) of G.S. 136-143 which had been derived or created as a result of industrial activity shall be deemed to be a junkyard within the meaning of this Article.

(5) "Primary system" means that portion of connected main highways, as now officially designated, or as may hereafter be so designated as primary system by the Department of Transportation or other appropriate authorities. As to highways under construction so designated as federal-aid primary highways pursuant to the above procedures, the highway shall be part of the federal-aid primary system for purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal or State authorities.

(6) "Unzoned area" shall mean an area where there is no zoning in effect.

(7) "Visible" means capable of being seen without visual aid by a person of normal visual acuity. (1967, c. 1198, s. 3; 1973, c. 507, s. 5; c. 1439, ss. 1-5; 1977, c. 464, s. 7.1.)

Editor's Note.—

The second 1973 amendment added the second sentences to subdivisions (1), (2), (4) and (5). The amendment also added subdivisions (6) and (7).

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in subdivisions (2) and (5).

§ 136-144. Restrictions as to location of junkyards. — No junkyard shall be established, operated or maintained, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, except the following:

(1) Those which are screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main-traveled way of the highway at any season of the year or otherwise removed from sight or screened in accordance with the rules and regulations promulgated by the Department of Transportation.
(2) Those located within areas which are zoned for industrial use under authority of law.
(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the Department of Transportation.
(4) Those which are not visible from the main-traveled way of an interstate or primary highway at any season of the year. (1967, c. 1198, s. 4; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-145. Enforcement provisions. — Any person, firm, corporation or association that establishes, operates or maintains a junkyard within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, after the effective date of this Article as determined by G.S. 136-155, that does not come within one or more of the exceptions contained in G.S. 136-144 hereof, shall be guilty of a misdemeanor, and each day that the junkyard remains within the prohibited distance shall constitute a separate offense. In addition thereto, said junkyard is declared to be a public nuisance and the Department of Transportation may seek injunctive relief in the superior court of the county in which the offense is committed to abate the said nuisance and to require the removal of all junk from the prohibited area. (1967, c. 1198, s. 5; 1973, c. 507, s. 5; c. 1439, s. 6; 1977, c. 464, s. 7.1.)

Editor's Note. —
The second 1973 amendment inserted "edge of the" preceding "right-of-way" and "as determined by G.S. 136-155" and substituted "the effective date of this Article" for "July 6, 1967," in the first sentence. The amendment also substituted "offense is committed" for "said junkyard is located" near the end of the section.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-146. Removal of junk from illegal junkyards. — Any junkyard established after the effective date of this Article as determined by G.S. 136-155, in violation of the provisions of this Article or rules and regulations issued by the Department of Transportation pursuant to this Article, shall be illegal and shall constitute a public nuisance. The Department of Transportation or its agents shall give 30 days' notice to the owner of said junkyard to remove the junk or to make the junkyard to conform to the provisions of this Article or rules and regulations promulgated by the Department of Transportation hereunder. The Department of Transportation or its agents may remove the junk from the illegal junkyard at the expense of the owner if the said owner fails to act within 30 days after receipt of such notice. The Department of Transportation or its agents may enter upon private property for the purpose of removing junk from the junkyards prohibited by this Article without civil or criminal liability. Any person aggrieved by the decision declaring the junkyard illegal shall be granted the right to appeal the decision in accordance with the terms of the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on

the agency appeal. (1967, c. 1198, s. 6; 1973, c. 507, s. 5; c. 1439, s. 7; 1977, c. 464, s. 7.1.)

Editor's Note. —
The second 1973 amendment rewrote the first sentence, inserted "or its agents" and deleted "by certified mail" following "notice" near the beginning of the second sentence, inserted "to" preceding "conform" and substituted "or" for "and" preceding "rules" in the second sentence, substituted "illegal" for "nonconforming" in the third sentence and added the last sentence.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-147. Screening of junkyards lawfully in existence. — Any junkyard lawfully in existence on the effective date of this Article as determined by G.S. 136-155 which does not conform to the requirements for exceptions in G.S. 136-144 hereof, and any other junkyard lawfully in existence along any highway which may be hereafter designated as an interstate or primary highway and which does not conform to the requirements for exception under G.S. 136-144 hereof, shall be screened, if feasible, by the Department of Transportation at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way in such manner that said junkyard shall not be visible from the main-traveled way of such highways. The Department of Transportation is authorized to acquire fee simple title or any lesser interest in real property for the purpose required by this section, by gift, purchase or condemnation. (1967, c. 1198, s. 7; 1973, c. 507, s. 5; c. 1439, s. 8; 1977, c. 464, s. 7.1.)

Editor's Note. —
The second 1973 amendment substituted "the effective date of this Article as determined by G.S. 136-155" for "July 6, 1967," near the beginning of the first sentence.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-148. Acquisition of existing junkyards where screening impractical. — (a) In the event that the Department of Transportation shall determine that screening of any existing junkyard designated in G.S. 136-147 hereof would be inadequate to accomplish the purposes of this Article, the said Department of Transportation is authorized to secure the relocation, removal or disposal of such junkyard by acquiring the fee simple title, or such lesser interest in land as may be necessary, to the land upon which said junkyard is located, through purchase, gift, exchange or condemnation.

(b) The Department of Transportation is authorized to move and relocate junk located on lands within the provisions of this section, and is authorized to pay the costs of such moving or relocation.

(c) The Department of Transportation is authorized to acquire by purchase, gift, exchange or condemnation, fee simple title or any lesser interest in real property for the purpose of placing and relocating the junk required to be moved under this section or permitted by G.S. 136-146 hereof to be removed. The Department of Transportation is authorized to convey in the manner provided by law for the conveyance of state-owned property, the lands on which junk is to be relocated, to the owner of the junk with or without consideration, under such conditions and reservations as it deems to be in the public interest.

(d) The Department of Transportation is authorized to convey in the manner provided by law for the conveyance of state-owned property any property acquired under the provisions of this section, under such conditions and reservations as it deems to be in the public interest.

(e) The Department of Transportation upon a determination that the same is necessary for the removal of any junkyard which is prohibited by G.S. 136-144

may acquire by gift, exchange, purchase or condemnation, the junk located on any junkyard which is acquired under this section and may acquire by gift, exchange, purchase or condemnation the fee simple title or lesser interest in land for the purpose of storing said junk by the Department of Transportation and may dispose of said junk in any manner which is not inconsistent with this Article. (1967, c. 1198, s. 8; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-149. Permit required for junkyards. — No person shall establish, operate or maintain a junkyard any portion of which is within 1,000 feet of the nearest edge of the right-of-way of the interstate or primary system without obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by the rules and regulations promulgated by the Department of Transportation. No permit shall be issued under the provisions of this section for the establishment, operation or maintenance of a junkyard within 1,000 feet to the nearest edge of the right-of-way of interstate or primary system except those junkyards which conform to one or more of the exceptions of G.S. 136-144. The permit shall be valid until revoked for the nonconformance of this Article or rules and regulations promulgated by the Department of Transportation thereunder. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision upon the agency appeal. The Department of Transportation shall have the authority to charge reasonable fees to defray the costs of administering the permit procedures under this Article. (1967, c. 1198, s. 9; 1973, c. 507, s. 5; c. 1439, s. 9; 1977, c. 464, s. 7.1.)

Editor's Note. —
The second 1973 amendment added the language beginning "or its agents" at the end of the first sentence, substituted "permit" for "license" and inserted "establishment" near the beginning of the second sentence, substituted "to" for "of" preceding "the nearest edge" near the middle of the second sentence, substituted "the nonconformance of" for "noncompliance with" and added "or rules and regulations promulgated by the Board of Transportation thereunder" in the third sentence, rewrote the fourth sentence and added the fifth sentence.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-149.1. Judicial review. — Any person who is aggrieved by a final decision of the Secretary of Transportation after exhausting all administrative remedies made available to him by rules and regulations enacted pursuant to this Article is entitled to judicial review of such decision under this Article. In order to obtain judicial review of the Secretary of Transportation's decision under this Article, the person seeking review must file a petition in the superior court of the county in which the junkyard is located within 30 days after written copy of the decision of the Secretary of Transportation is served upon the person seeking review. Failure to file such a petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter.

The petition shall state explicitly what exceptions are taken to the decisions of the Secretary of Transportation and what relief petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by registered mail, return receipt requested, upon the

Department of Transportation. Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the Department of Transportation shall transmit to the reviewing court a certified copy of the written decision.

At any time before or during the review proceeding, the aggrieved party may apply to the reviewing court for an order staying the operation of the decision of the Secretary of Transportation pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper. The review of the decision of the Secretary of Transportation under this Article shall be conducted by the court without a jury and shall hear the matter de novo pursuant to the rules of evidence as applied in the general court of justice. The court, after hearing the matter may affirm, reverse or modify the decision if the decision is:

(1) In violation of constitutional provisions; or
(2) Not made in accordance with this Article or rules or regulations promulgated by the Department of Transportation;
(3) Affected by other error or law.

The party aggrieved shall have the burden of showing that the decision was violative of one of the above.

A party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under the rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay for its final determination or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1973, c. 1439, s. 10; 1977, c. 464, ss. 7.1, 32, 33.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation or the Secretary of Transportation" in the second sentence of the second paragraph, for "Secretary of Transportation" in the third sentence of the second paragraph, and for "Board of Transportation" in subdivision (2) of the third paragraph.

§ 136-150. Condemnation procedure. — The Department of Transportation shall use the condemnation procedure as provided by Article 9 of Chapter 136 of the General Statutes for the purposes of this Article. (1967, c. 1198, s. 10; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-151. Rules and regulations by Department of Transportation; delegation of authority to Secretary of Transportation. — The Department of Transportation is authorized to promulgate rules and regulations in the form of ordinances governing:

(1) The establishment, operation and maintenance of junkyards permitted in G.S. 136-144 which shall include, but not be limited to, rules and regulations for determining unzoned industrial areas for the purpose of this Article.

(2) The specific requirements and procedures for obtaining a permit for junkyards as required in G.S. 136-149 and for the administrative procedures for appealing a decision at the agency level to refuse to grant or in revoking a permit previously issued.

(3) The administrative procedures for appealing a decision at the agency level to declare any junkyard illegal and a nuisance as pursuant to G.S. 136-146.

(4) The specific requirements governing the location, planting, construction and maintenance of material used in the screening or fencing required by this Article, all as may be necessary to carry out the policy of the State as declared in this Article.

The Department of Transportation, in its discretion, may delegate to the Secretary of Transportation the authority to promulgate such rules and regulations on its behalf. (1967, c. 1198, s. 11; 1973, c. 507, s. 5; c. 1439, s. 11; 1977, c. 464, s. 7.1.)

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

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-152. Agreements with United States. — The Department of Transportation is authorized to enter into agreements with other governmental authorities relating to the control of junkyards and areas in the vicinity of interstate and primary systems, and to take action in the name of the State to comply with the terms of such agreement. (1967, c. 1198, s. 12; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-153. Zoning changes. — All zoning authorities shall give written notice to the Department of Transportation of the establishment or revision of any industrial zone within 660 feet of the right-of-way of interstate or primary highways. Notice shall be by registered mail sent to the offices of the Department of Transportation in Raleigh, North Carolina, within 15 days after the effective date of the zoning change or establishment. (1967, c. 1198, s. 13; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-154. Alternate control. — In addition to any other provisions of this Article, the Department of Transportation shall have the authority to acquire by purchase, gift, exchange, or condemnation, such interests in real property as may be necessary to control the establishment and maintenance of junkyards in accordance with the policy, standards and regulations set out herein. (1967, c. 1198, s. 14; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 136-155. Availability of federal aid funds. — The Department of Transportation shall not be required to expend any funds for the regulation of

junkyards under this Article, nor shall the provisions of this Article, with the exception of G.S. 136-152 hereof, have any force and effect until federal funds are made available to the State for the purpose of carrying out the provisions of this Article, and the Department of Transportation has entered into an agreement with the United States Secretary of Transportation as authorized by G.S. 136-152 hereof and as provided by the Highway Beautification Act of 1965 or subsequent amendment thereto. (1967, c. 1198, s. 15; 1973, c. 507, s. 5; c. 1439, s. 12; 1977, c. 464, s. 7.1.)

Editor's Note.—

The second 1973 amendment inserted "United States" preceding "Secretary of Transportation."

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 15, 1977

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1977 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina