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THE GENERAL STATUTES OF NORTH CAROLINA

1979 CUMULATIVE SUPPLEMENT

JAN 28 1980

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

Under the Direction of

D. P. HARRIMAN, S. C. WILLARD AND SYLVIA FAULKNER

Volume 3B

1974 Replacement

Annotated through 297 N.C. 304 and 41 N.C. App. 192. For
complete scope of annotations, see scope of volume page.

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

THE MICHIE COMPANY

Law Publishers

CHARLOTTESVILLE, VIRGINIA

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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, the 1977 Sessions and the First 1979 Session of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein. At the Second 1973 Session, which was held in 1974, the General Assembly enacted Session Laws 1973, Chapters 827 to 1482.

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

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

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 30 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, the 1977 Sessions and the First 1979 Session of the General Assembly affecting Chapters 117 through 136 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports through volume 297, p. 304.
North Carolina Court of Appeals Reports through volume 41, p. 192.
Federal Reporter 2nd Series through volume 597, p. 283.
Federal Supplement through volume 469, p. 738.
Federal Rules Decisions through volume 81, p. 262.
United States Reports through volume 438, p. 783.
Supreme Court Reporter through volume 99.
North Carolina Law Review.
Wake Forest Intramural Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

The General Statutes of North Carolina

1979 Cumulative Supplement

VOLUME 3B

Chapter 117.

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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.

§ 117-2.1. Additional powers. — In addition to the powers provided in G.S. 117-2, the Authority is empowered, authorized and directed to make, promulgate and implement plans and programs whereby the electric membership corporations organized or domesticated under this Chapter shall promote and foster methods of conserving electric energy in accordance with provisions of the National Energy Act as delegated to the states. (1979, c. 285, s. 1.)

§ 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 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. The directors must be members of the corporation, except that for those corporations whose principal purpose is to furnish bulk electric wholesale power supplies and whose membership consists of other electric membership corporations, the directors may be members, directors, officers or managers of the member corporations, and shall be elected by the member corporation's board of directors. (1935, c. 291, s. 8; 1959, c. 387, s. 1; 1969, c. 760; 1975, c. 314; 1979, c. 285, s. 2.)

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.

The 1979 amendment deleted "must be members and" after "The directors" near the beginning of the third sentence, and added the fifth sentence.

§ 117-16. Corporate purpose; terms and conditions of membership. — The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such corporation: Provided, that such terms and conditions of membership shall be reasonable; and provided further, that no bona fide applicant for membership, who is able and willing to satisfy and abide by all such terms and conditions of membership, shall be denied arbitrarily, or capriciously, or without good cause. With respect to the members of an electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, the word "use" as used in this section shall also mean either "use and purchase" or "purchase" solely, as the case may be, and

the words "supplied by" shall also mean "supplied for the account of". With respect to an electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, it shall be lawful for such corporation to enter into joint arrangements with other power supply entities, including but not limited to investor-owned public utilities and bodies politic, for the purchase and sale of bulk power supplies and bulk power services and for the joint ownership of bulk power supply properties. (1935, c. 291, s. 11; 1959, c. 387, s. 2; 1979, c. 285, s. 3.)

Editor's Note. — The 1979 amendment added the second and third sentences.

§ 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.

ARTICLE 4.

Telephone Service and Telephone Membership Corporations.

§ 117-30. Telephone membership corporations. — (a) In the event it is ascertained by the Rural Electrification Authority that the community or communities referred to in the foregoing section [G.S. 117-29] are in need of telephone service and that there is a sufficient number of persons to be served to justify such services, and the telephone company serving in the area in which the community or communities are located is unwilling to provide such service, a telephone membership corporation may be organized by such community or communities in the same manner that electric membership corporations may be formed under Article 2 of this Chapter, and all of the provisions of said Article

shall be applicable to the formation of telephone membership corporations and such corporations shall have all the authority, powers and duties of such a corporation when formed under the provisions of said Article; except that the provisions of G.S. 117-8, 117-9, 117-10.1, 117-10.2, 117-16.1, 117-19 and 117-24 shall not be applicable to the organization of a telephone membership corporation, and except that such corporations so formed for the express purpose of providing telephone service necessary to serve the community or communities prescribed in the application may also provide the community or communities prescribed in the application with any communication service for the transmission of voice, sounds, signals, pictures, writing or signs of all kinds through the use of electricity or the electromagnetic spectrum between the transmitting and receiving apparatus, together with any telecommunications service requiring band-width capacity, including, but not limited to community antenna and cable television services, and including all lines, wires, cables, radio, light, electromagnetic impulse and all facilities, systems or other means used in the rendition of such services, but not including message telegram service or radio broadcasting services or facilities within the meaning of section 3(o) of the Federal Communications Act of 1934, as amended (47 USC § 153(o)) and except that such corporation so formed shall have no authority to engage in any other business. Provided, that the references in Article 2 of this Chapter to "power lines" or "energy" as to such telephone membership corporations shall be construed to mean telephone lines, broadband cables and lines, telephone service and broadband communications services. Provided further, that nothing herein shall be construed to authorize any telephone membership corporation organized hereunder to duplicate any line or lines, systems or other means by which adequate telephone service is being furnished; or to build or to construct a telephone line, or telephone lines, or telephone systems, or otherwise to provide facilities or means of furnishing telephone service to any person, community, town or city then being adequately served by a telephone company, corporation or system; or to provide telephone service in an unserved area while any telephone company, corporation or system is acting in good faith and with reasonable diligence in arranging to provide adequate telephone service to such person, community, town or city.

(b) Any telephone membership corporation formed under this Article which now provides or has imminent plans to provide any service which is subject to the requirement of a state or local franchise shall make reasonable efforts to secure any such state or local franchise required for the operation of such service within its service area. Unless otherwise prohibited, any such franchise granted to a telephone membership corporation may be transferred or assigned by that corporation, in its discretion, if such transfer or assignment is reasonably calculated to contribute to the development of any such service within the franchised area. Provided, however, that no telephone membership corporation shall be required to obtain a state or local franchise to provide the types of telephone services being provided on July 1, 1979 by a telephone membership corporation, or the types of telephone services offered by existing telephone membership corporations on July 1, 1979 and proposed to be offered by any telephone membership corporation formed thereafter, without respect to the facilities or methods which are used to provide such services. (1945, c. 853, s. 2; 1965, c. 345, s. 1; 1979, c. 586.)

Editor's Note. — The 1979 amendment designated the former section as subsection (a) and added subsection (b). In subsection (a) the amendment inserted the language beginning "for the expressed purpose" and ending with "such corporations so formed" in the first sentence, substituted "other business" for

"business except the telephone business necessary to serving the community or communities prescribed in the application" at the end of that sentence, made the proviso formerly at the end of the first sentence into the present second sentence, substituted "Article 2 of this Chapter" for "said Article" near the

beginning of the present second sentence, and substituted "broadband cables and lines, telephone service and broadband communications services" for "and telephone service" at the end of that sentence.

§§ 117-36 to 117-40: Reserved for future codification purposes.

ARTICLE 5.

Consolidation and Merger.

§ 117-41. **Consolidation.** — (a) Any two or more electric membership corporations or any two or more telephone membership corporations, organized and operating under this Chapter (each of which is hereinafter designated a "consolidating corporation"), may consolidate into a new corporation (hereinafter designated the "new corporation"), by complying with the provisions of subsections (b) and (c) hereof and of G.S. 117-43.

(b) The proposition for the consolidation of the consolidating corporations into the new corporation and proposed articles of consolidation to give effect thereto shall be submitted to a meeting of the members of each consolidating corporation, the notice of which shall have attached thereto a copy of the proposed articles of consolidation.

(c) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two thirds of those members of each consolidating corporation voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this Chapter and shall state:

- (1) The name of each consolidating corporation and the address of its principal office;
- (2) The name of the new corporation and the address of its principal office;
- (3) A statement that each consolidating corporation agrees to the consolidation;
- (4) The names and addresses of the directors of the new corporation; and
- (5) The terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating corporations may or shall become members of the new corporation; and may contain any provisions not inconsistent with this Chapter deemed necessary or advisable for the conduct of the business of the new corporation. The president or vice-president of each consolidating corporation executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such corporation. (1979, c. 285, s. 4.)

§ 117-42. **Merger.** — (a) Any one or more electric membership corporations or any one or more telephone membership corporations, organized and operating under this Chapter (each of which is hereinafter designated a "merging corporation"), may merge into another like corporation (hereinafter designated the "surviving corporation"), by complying with the provision of G.S. 117-42(b) and (c), and G.S. 117-43.

(b) The proposition for the merger of the merging corporation(s) into the surviving corporation and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members of such merging corporation(s)

and of the surviving corporation, the notice of which shall have attached thereto a copy of the proposed articles of merger.

(c) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two thirds of those members of each corporation voting thereon at each such meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this Chapter and shall state:

- (1) The name of each merging corporation and the address of its principal office;
- (2) The name of the surviving corporation and the address of its principal office;
- (3) A statement that each merging corporation and the surviving corporation agree to the merger;
- (4) The names and addresses of the directors of the surviving corporation; and
- (5) The terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members of the merging corporations may or shall become members of the surviving corporation; and may contain any provisions not inconsistent with this Chapter deemed necessary or advisable for the conduct of the business of the surviving corporation. The president or vice-president of each corporation executing such articles of merger shall make and annex thereto an affidavit stating that the provisions of this section in respect of such article were duly complied with by such corporation. (1979, c. 285, s. 4.)

§ 117-43. Filing and recording of articles of consolidation or merger. — Articles of consolidation or merger shall be filed with the Secretary of State, who shall forthwith prepare one or more certified copies thereof and forward one to the register of deeds of each county in which a portion of the territory of the filing corporation is authorized to furnish service, which registers of deeds shall forthwith file such certified copy in their respective offices and record the same as articles of incorporation are recorded. As soon as the provisions of this section have been compiled with, the new consolidated corporation or the surviving merged corporation, described and named in the articles so filed, shall become and constitute a body corporate in accordance with the provisions of such articles. (1979, c. 285, s. 4.)

§ 117-44. Effect of consolidation or merger. — Upon compliance with the provisions of G.S. 117-44:

- (1) a. In the case of a consolidation, the existence of the consolidating corporations shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new corporation; and
b. In the case of a merger, the separate existence of the merging corporations shall cease and the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.
- (2) All the rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action, of each of the consolidating or merging corporations shall be deemed to be transferred to and vested in the new or surviving corporation without further act or deed.

- (3) The new or surviving corporation shall be responsible and liable for all the liabilities and obligations of each of the consolidating or merging corporations and any claim existing or action or proceeding pending by or against any of the consolidating or merging corporations may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving corporation may be substituted in its place.
- (4) Neither the rights of creditors nor any liens upon the property of any of such corporations shall be impaired by such consolidation or merger. (1979, c. 285, s. 4.)

§ 117-45. Validation. — No provision of Article 5 nor any provision thereof shall, or shall be construed to, express or imply the invalidity or invalidation of the incorporation or operations of any electric or telephone membership corporation heretofore organized and operating under Chapter 117 of the General Statutes, including but not limited to North Carolina Electric Membership Corporation and any two or more electric or telephone membership corporations which have substantively merged or consolidated; and any such substantive mergers or consolidations are hereby specifically validated. (1979, c. 285, s. 4.)

Chapter 118.

Firemen's Relief Fund.

Article 1.

Fund Derived from Fire Insurance Companies.

Sec.

118-6. Trustees appointed; organization.

Article 3.

North Carolina Firemen's Pension Fund.

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

Sec.

118-22. State treasurer to be custodian of fund; appropriations; contributions to fund; expenditures.

118-24.2. Additional retroactive membership.

118-25. Monthly pensions upon retirement.

118-26. Payments in lump sums.

118-31. Effect of member being six months delinquent in making monthly payments.

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 Asheville: 1979, c. 208; city of Clinton: 1979, c. 264, amending 1973, c. 46; 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 Greensboro: 1979, c. 289, amending 1953, c. 899; city of Kings Mountain: 1979, c. 209; city of Lenoir: 1973, c. 1261; city of Lumberton: 1973, c. 960, amending 1955, c. 100; city of Marian: 1979, c. 26; city of Monroe: 1975, c. 31; city of North Wilkesboro: 1969, c. 120; 1979, c. 366; city of Raleigh: 1969, c. 421; 1975, c. 504; 1979, c. 328; 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 Mebane: 1979, c. 183; 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. By virtue of Session Laws 1979, c. 94, city of Reidsville should be stricken from the replacement volume. By virtue of Session Laws 1979, c. 341, city of Lincolnton should be stricken from the replacement volume. By virtue of Session Laws 1979, c. 557, city of Fayetteville 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.

§ 118-22. State Treasurer to be custodian of fund; appropriations; contributions to fund; expenditures. — The State Treasurer shall be the custodian of the North Carolina Firemen's Pension Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3. The appropriations made by the General Assembly out of the general fund to provide money for administrative expenses shall be handled in the same manner as any other general fund appropriation. One fourth of the appropriation made out of the general fund to provide for the financing of the pension fund shall be transferred quarterly to a special fund to be known as the North Carolina Firemen's Pension Fund. There shall be set up in the State Treasurer's office a special fund to be known as the North Carolina Firemen's Pension Fund, and all contributions made by the members of this pension fund shall be deposited in said special fund. All expenditures for refunds, investments or benefits shall be in the same manner as expenditures of other special funds. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1971, c. 30; 1979, c. 467, s. 10.)

Editor's Note. —

The 1979 amendment added "and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3" at the end of the first sentence, and deleted the former sixth and

seventh sentences and the former second paragraph, which related to the power of the State Treasurer to invest moneys in certain enumerated securities.

§ 118-24.2. Additional retroactive membership. — Any fireman who is now eligible and who has not previously elected to become a member may make application through the board of trustees heretofore created for membership in said fund on or before June 30, 1980; provided, that such person shall make a lump sum payment of five dollars (\$5.00) per month retroactively to the time he first became eligible to become a member, plus interest at an annual rate of six percent (6%) for each year of his retroactive payments. Upon making such lump sum payment, such person will be given credit for all prior service in the same manner as if he had made application for membership at the time he first became eligible; provided, further, that any member who made application for membership subsequent to the time he was first eligible and did not receive credit for prior service may receive credit for such prior service upon lump sum payment of five dollars (\$5.00) per month retroactively to the time he first became eligible, plus interest at an annual rate of six percent (6%) for each year of his retroactive payments. Upon making such lump sum payments, the date of membership would be the same as if he had made application for membership at the time he was first eligible.

Nothing in this section shall be construed as modifying or changing any provisions of Article 3 of Chapter 118 of the General Statutes except as expressly provided. (1979, c. 965, ss. 1, 3.)

§ 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

§ 118-26

1979 CUMULATIVE SUPPLEMENT

§ 118-31

(\$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	Death Benefit Act, see §§ 143-166.1 through
Law-Enforcement Officers', Firemen's, Rescue					143-166.7.
Squad Workers' and Civil Air Patrol Members'					

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 2A.****Sec.****Regulation of Rerefined or Reprocessed Oil.**

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

Sec.

119-13.1. Definitions.

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

Article 4.**Liquefied Petroleum Gases.****Article 3.**

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

Gasoline and Oil Inspection.

119-16.1. "Kerosene" defined.

ARTICLE 2A.***Regulation of Rerefined or Reprocessed Oil.***

§ 119-13.1. **Definitions.** — As used in this Article:

- (1) "Rerefined or reprocessed oil" means lubricating oil for use in internal combustion engines, which has been rerefined or processed in whole or part from previously used lubricating oils.
- (2) "Specifications" means the minimum chemical properties or analysis as determined by the American Society for Testing Materials (A.S.T.M.) test methods using current ASTM analytical procedures. (1953, c. 1137; 1979, c. 158, s. 1.)

Editor's Note. — The 1979 amendment rewrote subdivision (2).

§ 119-13.2. **Labels required on sealed containers; oil to meet minimum specifications.** — It shall be unlawful to offer for sale or sell or deliver in this State rerefined or reprocessed oil, as hereinbefore defined, in a sealed container unless this container be labeled or bear a label on which shall be expressed the brand or trade name of the oil and the words "made from previously used lubricating oil"; the name and address of the person, firm, or corporation who has rerefined or reprocessed said oil or placed it in the container; the Society of Automotive Engineers (S.A.E.) viscosity number; the net contents of the container expressed in U.S. liquid measure of quarts, gallons, or pints; which label has been registered and approved by the Gasoline and Oil Inspection Division of the Department of Agriculture; and that the oil in each container shall meet the minimum specifications. The Gasoline and Oil Inspection Board shall adopt minimum quality specifications, the measurement of which shall be accomplished using current A.S.T.M. analytical procedures. (1953, c. 1137; 1979, c. 158, s. 2.)

Editor's Note. — The 1979 amendment substituted "made from previously used lubricating oil" for "reprocessed oil" in letters at least one-half inch high" near the middle of the first sentence, deleted "sealed" before

"container shall" near the end of that sentence, deleted "as hereinbefore described for each Society of Automotive Engineers (S.A.E.) viscosity number" at the end of that sentence, and added the second sentence.

ARTICLE 3.

Gasoline and Oil Inspection.

§ 119-16.1. "Kerosene" defined. — The term "kerosene" wherever used in this Article, except to the extent otherwise provided in G.S. 119-16 shall include all petroleum oil free from water, glue and suspended matter and having flash point not below 115° F., a sulphur content not exceeding two-tenths percent (0.20%), and a distillation "end point" not higher than 572° F. as determined by currently approved A.S.T.M. procedures. The presence or absence of coloring matter shall in no way be determinative of whether a substance is kerosene within the meaning of this section. (1955, c. 1313, s. 7; 1979, c. 222, s. 1.)

Editor's Note. — The 1979 amendment deleted "Tag Closed Tester A.S.T.M. D-56" after "115° F." near the middle of the first sentence, inserted "a" before "sulphur" near the middle of that sentence, substituted "two-tenths percent

(0.20%), and a" for "0.13% (A.S.T.M., D-90 Modified)" near the end of that sentence, and substituted "as determined by currently approved A.S.T.M. procedures" for "(A.S.T.M., D-86)" at the end of that sentence.

§ 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

Chapter 120.

General Assembly.

Article 1.

Apportionment of Members; Compensation and Allowances.

Sec.

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

Article 5A.

Committee Activity.

- 120-19.4. Failure to respond to subpoena or refusal to testify punishable as contempt.

Article 6B.

Legislative Research Commission.

- 120-30.10. Creation; appointment of members; members ex officio.
- 120-30.11. Time of appointments; terms of office.
- 120-30.17. Powers and duties.
- 120-30.18. Facilities; compensation of members; payments from appropriations.
- 120-30.19 to 120-30.23. [Reserved.]

Article 6C.

Review of Administrative Rules.

- 120-30.24. Definitions.
- 120-30.25. Filing of rules.
- 120-30.26. Administrative Rules Review Committee.
- 120-30.27. Meetings of Committee.
- 120-30.28. Review of rules.
- 120-30.29. Objections of Committee.
- 120-30.30. Review of rule by Legislative Research Commission.
- 120-30.31. Regulation objected to by Legislative Research Commission.
- 120-30.32. Reports of the Committee.
- 120-30.33. Legislative Research Commission recommendations.
- 120-30.34. Emergency rules.
- 120-30.35. Hearings.

Article 7.

Legislative Services Commission.

- 120-32. Commission duties.
- 120-32.1. Use and maintenance of State Legislative Building.
- 120-32.2. State Legislative Building special police.

Sec.

- 120-32.3. Oath of State Legislative Building special police.
- 120-32.4. Subpoena and contempt powers.

Article 8.

Elected Officers.

- 120-37. Elected officers; salaries; staff.

Article 9.

Lobbying.

- 120-40 to 120-47. [Recodified.]

Article 9A.

Lobbying.

- 120-47.1. Definitions.
- 120-47.2. Registration procedure.
- 120-47.3. Registration fee.
- 120-47.4. Written authority from employer to be filed; copy for legislative committee.
- 120-47.5. Contingency lobbying fees and election influence prohibited.
- 120-47.6. Statements of legislative agent's lobbying expenses required.
- 120-47.7. Statements of employer lobbying expenses required.
- 120-47.8. Persons exempted from provisions of Article.
- 120-47.9. Punishment for violation.
- 120-47.10. Enforcement of Article by Attorney General.

Article 11.

Legislative Intern Program Council.

- 120-57. Legislative Intern Program Council to promulgate a plan for the use of legislative interns.

Article 12.

Commission on Children with Special Needs.

- 120-58. Creation; appointment of members.
- 120-59. Time of appointments; terms of office.
- 120-60. Organization of Commission.
- 120-61. Members to serve without compensation; subsistence and travel expenses.
- 120-62. Assistance to Commission.
- 120-63. Duties of Commission.
- 120-64. Reports to General Assembly.
- 120-65. Assistance of Department of Human Resources and Department of Public Education.
- 120-66 to 120-70. [Reserved.]

Article 13.**Joint Legislative Commission
on Governmental
Operations.**

Sec.

- 120-71. Purpose.
- 120-72. Definition.
- 120-73. Commission established.
- 120-74. Appointment of members; terms of office.
- 120-75. Organization of the Commission.
- 120-76. Powers and duties of the Commission.
- 120-77. Additional powers.
- 120-78. Compensation and expenses of Commission members.
- 120-79. Commission staffing.
- 120-80 to 120-84. [Reserved.]

Article 14.**Legislative Ethics Act.****Part 1. Code of Legislative
Ethics.**

- 120-85. Definitions.
- 120-86. Bribery, etc.
- 120-87. Disclosure of confidential information.
- 120-88. When legislator to disqualify himself or submit question to Legislative Ethics Committee.

**Part 2. Statement of
Economic Interest.**

- 120-89. Statement of economic interest by legislative candidates; filing required.
- 120-90. Place and manner of filing.
- 120-91. Certification of statements of economic interest.

Sec.

- 120-92. Filing by candidates not nominated in primary elections.
- 120-93. County boards of elections to notify candidates of economic-interest-statement requirements.
- 120-94. Statements of economic interest are public records.
- 120-95. Legislators to file statement of economic interest with Legislative Services Office.
- 120-96. Contents of statement.
- 120-97. Updating statements.
- 120-98. Penalty for failure to file.

**Part 3. Legislative Ethics
Committee.**

- 120-99. Creation; composition.
- 120-100. Term of office; vacancies.
- 120-101. Quorum; expenses of members.
- 120-102. Powers and duties of Committee.
- 120-103. Possible violations; procedures; disposition.
- 120-104. Advisory opinions.
- 120-105. Continuing study of ethical questions.
- 120-106. Article applicable to presiding officers.
- 120-107 to 120-111. [Reserved.]

Article 15.**Retirement Systems Actuarial
Note Act.**

- 120-112. Title.
- 120-113. Duties and functions of Fiscal Research Division.
- 120-114. Actuarial notes.

ARTICLE 1.***Apportionment of Members; Compensation and Allowances.***

§ 120-3. Pay of members and officers of the General Assembly. — The Speaker of the House shall be paid an annual salary of twelve thousand dollars (\$12,000), payable monthly, and an expense allowance of three hundred dollars (\$300.00) 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 seven thousand five hundred dollars (\$7,500), payable monthly, and an expense allowance of two hundred dollars (\$200.00) per month. Every other member of the General Assembly shall 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. The salary and expense allowances provided in this 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. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2.)

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).

The 1977, 2nd Sess., amendment, effective with the convening of the regular session of the 1979 General Assembly, increased the salaries and expense allowances in the first, second and third sentences and repealed former subsection (b) relating to additional compensation for the presiding officers of the two houses, and former subsection (c), relating to members of the General Assembly wishing to be paid on an annual or semiannual basis.

Amendment Effective January 1, 1981. —

Session Laws 1979, c. 838, s. 92, effective January 1, 1981, will amend this section by increasing the salary of the Speaker of the House to \$12,600, the salaries of the President pro tempore of the Senate, the Speaker pro tempore of the House, and the minority leaders of both the House and Senate, to \$7,875, and the salaries of the other members of the General Assembly to \$6,300.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

§ 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 forty-four dollars (\$44.00) per day for each day of the period during which the General Assembly remains in session.
- (4) A subsistence allowance in the sum of forty-four dollars (\$44.00) 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; 1977, 2nd Sess., c. 1249, ss. 3, 4.)

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.

The 1977, 2nd Sess., amendment, effective

with the convening of the regular session of the 1979 General Assembly, increased the allowances in subdivisions (3) and (4) of subsection (a) from \$35.00 to \$44.00 per day.

§ 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.

Session Laws 1979, c. 467, s. 11, provides that "Any other provisions of law to the contrary notwithstanding, the State Treasurer shall

invest the assets of the Legislative Retirement Fund created by Chapter 1269 of the Session Laws of 1969, as amended by Chapter 905 of the Session Laws of 1971 and Chapter 1482 of the Session Laws of 1973, in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3."

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."

§ 120-19. State officers, etc., upon request, to furnish data and information to legislative committees.

Committee Membership Not Required of Individual Members of General Assembly. — A member of the General Assembly must not also be a member of a committee of the General Assembly, investigative or otherwise, to invoke this section to gain access to otherwise confidential state personnel information so long as the information sought is, or appears

necessary to the fulfillment of the requestor's duties and responsibilities as a member of the General Assembly. See opinion of Attorney General to Honorable John T. Henley, President Pro Tempore of the Senate and Honorable Carl J. Stewart, Jr., Speaker of the House of Representatives, 48 N.C.A.G. 2 (1979).

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 as subsection (a) and added subsections (b) and designated the former provisions of the section (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, 2nd Sess., c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, provides: "This section and sections 5 [amending § 150A-2] and 7 [amending § 150A-58] of this act shall become effective on October 1, 1977. The remaining sections of this act shall become effective on October 1, 1977, and shall expire on June 30, 1981."

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. 120-30.30 or holding public hearings pursuant to G.S. 120-30.35. (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, 2nd Sess., c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, provides: "This section and sections 5 [amending § 150A-2] and 7 [amending § 150A-58] of this act shall become effective on October 1, 1977. The remaining sections of this act shall become

effective on October 1, 1977, and shall expire on June 30, 1981."

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, the Employment Security 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. 120-30.26.
- (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; 1979, c. 541, s. 3.)

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. — The 1979 amendment inserted "the Employment Security Commission" near the middle of the second sentence of subdivision (1).

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

Session Laws 1977, c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, provides that

this Article shall become effective on October 1, 1977, and shall expire on June 30, 1981.

Review of Rules Adopted by Coastal Resources Commission. — Pursuant to this section et seq., all rules adopted by the Coastal Resources Commission are subject to review by a permanent committee of the Legislative Research Commission known as the Administrative Rules Committee. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 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 prior to the filing 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. 120-30.28 through G.S. 120-30.35. (1977, c. 915, s. 1; 1979, c. 571, s. 2.)

Editor's Note. — The 1979 amendment, effective June 29, 1979, substituted "prior to the filing" for "at the same time filing is" near the middle of subsection (b).

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, and biennially thereafter, 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. 120-30.30. (1977, c. 915, s. 1; 1979, c. 1030, s. 3.)

Editor's Note. — The 1979 amendment inserted "and biennially thereafter," near the beginning of the third sentence.

§ 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.)

Quoted in Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 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. 120-30.28(c) and G.S. 120-30.30(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 8.

Elected Officers.

§ 120-37. Elected officers; salaries; staff. — (a) At the convening of the first session of the General Assembly following each biennial election of members of the General Assembly, each house shall elect a principal clerk, a reading clerk and a sergeant-at-arms for terms of two years, subject to the condition that each officer shall serve at the pleasure of the house that elected him and shall serve until his successor is elected.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of one hundred twenty-six dollars (\$126.00) per week, plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only.

(c) The principal clerks shall be full-time officers. Each principal clerk shall be paid an annual salary of twenty-two thousand two hundred sixty dollars (\$22,260), payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(d) The Legislative Services Commission may authorize additional full-time staff employees of the office of each principal clerk. The Speaker may assign to the Principal Clerk of the House additional duties for the periods between sessions and during recesses of the General Assembly. The President pro tempore of the Senate may assign to the Principal Clerk of the Senate additional duties for the periods between sessions and during recesses of the General Assembly.

(e) The principal clerks and the sergeants-at-arms may, upon authorization of the Legislative Services Commission, employ temporary assistants to prepare for each legislative session, serve during the session, and perform necessary duties following adjournment.

(f) Following adjournment sine die of each session of the General Assembly, each principal clerk shall retain in his office for a period of two years every bill and resolution considered by but not enacted or adopted by his house, together with the calendar books and other records deemed worthy of retention. At the end of two years, these materials shall be turned over to the Division of Archives and History of the Department of Cultural Resources for ultimate retention or disposition. (1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective Jan. 1, 1979, rewrote this section.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

The 1979 amendment, effective July 1, 1979, increased the annual salary of principal clerks from \$21,200 to \$22,260.

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 11.

Legislative Intern Program Council.

§ 120-57. Legislative Intern Program Council to promulgate a plan for the use of legislative interns. — The Legislative Intern Program Council is hereby empowered and is directed to promulgate for each session of the General Assembly a plan providing for the selection, tenure, duties and compensation of legislative interns. Interns shall be selected from institutions of higher education (four-year colleges and universities) within North Carolina, including but not limited to all units of the university system. The selection shall be based upon guidelines set forth by the Legislative Intern Program Council; these guidelines shall permit the proper consideration of each applicant. (1969, c. 32; 1979, c. 1067, s. 1.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted the present second and third sentences for the former second sentence, which read: "Such plan shall become effective when it has been adopted by the Legislative Intern Program Council."

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 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; 1979, c. 932, s. 9.)

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

The 1979 amendment deleted “Assistant” before “Majority Leader” in the second sentence.

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.
- (8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, to investigate and dispose of the matter according to the terms of this Article. (1975, c. 564, s. 1; 1979, c. 864, s. 3.)

Editor's Note. — The 1979 amendment added subdivision (8).

§ 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.)

(b) 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 duplicate. The actuary shall prepare an actuarial note and transmit it to the author or authors of the measure in duplicate 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.

(c) The note shall be factual and shall, if possible, provide a reliable estimate of the estimated effect of the bill or resolution on the retirement system. The long range fiscal and actuarial effect of the measure, if a reliable estimate is possible, shall be included in the actuarial note. The note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. The opinion of the actuary 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 regarding the preparation of the note shall not be grounds for rejection of the note.

(d) 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 introduction, with any amendments or other changes, the actuary would be responsible for the effect of the changes on the retirement system as stated in the actuarial note or notes attached to the instrument at the time of introduction. It shall be the responsibility of the chairman of the committee to report such instrument to the Fiscal Research Division and to attach an actuarial note of the fiscal and actuarial effect of the change proposed by the committee. The actuarial note shall be attached to the report of the committee on the measure as a supplement thereto. A fiscal amendment to a bill or resolution to which an actuarial note was attached at the time of introduction shall be reported to the committee on the measure as a supplement thereto. A fiscal amendment to a bill or resolution to which an actuarial note was attached at the time of introduction shall be reported to the committee on the measure as a supplement thereto. A fiscal amendment to a bill or resolution to which an actuarial note was attached at the time of introduction shall be reported to the committee on the measure as a supplement thereto.

Chapter 121.**Archives and History.****Article 1.****General Provisions.**

Sec.

121-4. Powers and duties of the Department of Cultural Resources.

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121-26. Funds received by Department under § 121-25.

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Article 4.**Conservation and Historic Preservation Agreements Act.**

121-34. Short title.

121-35. Definitions.

121-36. Applicability.

121-37. Acquisition and approval of conservation and preservation agreements.

121-38. Validity of agreements.

121-39. Enforceability of agreements.

121-40. Assessment of land or improvements subject to agreement.

121-41. Public recording of agreements.

121-42. Citation of article.

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.)

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.

Editor's Note. — The 1977 amendment, effective July 1, 1977, deleted "and Highway

§ 121-5. Public records and archives.

(d) Preservation of Permanently Valuable Records. — Public records certified by the Department of Cultural Resources as being of permanent value shall be preserved in the custody of the agency in which the records are normally kept or of the North Carolina State Archives. Any State, county, municipal, or other public official is hereby authorized and empowered to turn over to the Department of Cultural Resources any State, county, municipal, or other public records no longer in current official use, and the Department of Cultural Resources is authorized in its discretion to accept such records, and having done so shall provide for their administration and preservation in the North Carolina State Archives. When such records have been thus surrendered, photocopies, microfilms, typescripts, or other copies of them shall be made and certified under seal of the Department, upon application of any person, which certification shall have the same force and effect as if made by the official or agency by which the records were transferred to the Department of Cultural Resources; and the Department may charge reasonable fees for such copies. The Department may answer written inquiries for nonresidents of North Carolina and for such service charge a search and handling fee not to exceed five dollars (\$5.00), the receipts from which fee shall be used to defray the cost of providing such service. (1907, c. 714, s. 5; C. S., s. 6145; 1939, c. 249; 1943, c. 237; 1945, c. 55; 1953, c. 224; 1955, c. 543, s. 1; 1959, c. 1162; 1973, c. 476, s. 48; 1979, c. 361; c. 801, s. 95.)

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.

Editor's Note. — Both 1979 amendments added a last sentence to subsection (d). The sentences were identical except that the first

amendment provided a fee of \$10.00 and the second provided a fee of \$5.00. The second amendment has been used in the section as set out above.

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

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

§ 121-6. Historical publications.

(c) It shall be the duty and responsibility for the Department of Cultural Resources to edit and publish a second or new series of the most significant records of colonial North Carolina. From records which have been compiled in the North Carolina State Archives concerning the colonial period of North Carolina, a selection of the most significant documents shall be made therefrom by a skilled and competent editor. The editor shall edit, according to acceptable scholarly standards, the selected materials which shall be published in documentary volumes not to exceed approximately 700 pages each in length until full and representative published colonial records of North Carolina shall have been achieved. The number of copies of each volume to be so printed shall be determined by the Department of Cultural Resources, and such determination shall be based on the number of copies the department can reasonably expect to sell in a period of 10 years from the date of publication. (1971, c. 480, s. 6; 1973, c. 476, s. 48; 1979, c. 1010.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, added subsection (c).

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

§ 121-7. Historical museums. — The Department of Cultural Resources shall maintain and administer the North Carolina Museum of History for the collection, preservation, study, and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina. The Department, with the approval of the Historical Commission, may acquire, either by purchase, gift, or loan such artifacts and materials, and, having acquired them, shall according to accepted museum practices classify, accession, preserve, and where feasible exhibit such materials and make them available for study. Within available funds, one or more branch museums of history may be established and administered by the Department. The Department of Cultural Resources, subject to the availability of staff and funds, may give financial, technical, and professional assistance to nonstate historical museums sponsored by governmental agencies and nonprofit organizations according to regulations adopted by the North Carolina Historical Commission.

Insofar as practicable, the North Carolina Museum of History shall accession and maintain records showing provenance, value, location, and other pertinent information on such furniture, furnishings, decorative items, and other objects as have historical or cultural importance and which are owned by or to be acquired by the State for use in the State Capitol and the Executive Mansion, and, upon request of the Department of Administration, any other state-owned building. When any such item or object has been entered in the accession records of the Museum of History, the custodian of such item or object shall, upon its removal from the premises upon which it was located or when it is otherwise disposed of, submit to the Museum of History sufficient details concerning its removal or disposition to permit an adequate entry in the accession records to the end that its location or disposition, and authority for such change, shall be showed therein. (1973, c. 476, s. 48; 1979, c. 861, s. 1.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, inserted "financial" and substituted "museums" for "museum projects" near the middle of the fourth sentence of the

first paragraph, and added "according to regulations adopted by the North Carolina Historical Commission" at the end of that sentence.

§ 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. — In consideration of the public purpose thereby achieved, the Department of Cultural Resources may assist any county, city, or other political subdivision, corporation or organization, or private individual in the acquisition, maintenance, preservation, restoration, or development of historic or archaeological property by providing a portion of the cost therefor: Provided, that no acquisition, maintenance, preservation, restoration, or development of any property, nor any assistance therefor may be made by the State of North Carolina and no contribution for these purposes may be made from State funds until

- (1) The property or properties shall have been approved for these purposes by the Department of Cultural Resources according to criteria adopted by the North Carolina Historical Commission,

- (2) The report and recommendations of the Commission have been received and considered by the Department of Cultural Resources, and
- (3) The Department has found that there is a feasible and practical method of providing funds for the acquisition, restoration, preservation, maintenance, and operation of such property.

In all cases where assistance is extended to nonstate owners of property, whether from State funds or otherwise, it shall be a condition of assistance that

- (1) The property assisted shall, upon its acquisition or restoration, be made accessible to the public at such times and upon such terms as the Department of Cultural Resources shall by rule prescribe;
- (2) That the plans for preservation, restoration, and development be reviewed and approved by the Department of Cultural Resources;
- (3) That the expenditure of such funds be supervised by the Department of Cultural Resources; and
- (4) That such expenditures be accounted to the Department in a manner and at such times as are satisfactory to it.

In further consideration of the public purpose thereby achieved, the Department of Cultural Resources may assist any county, city, or other political subdivision, or corporation nonprofit history museum in the development of interpretive, security or climate control programs or projects. Provided, that no assistance may be made by the State of North Carolina and no contribution for these purposes may be made from State funds until:

- (1) The program or project shall have been approved for these purposes by the Department of Cultural Resources according to criteria adopted by the North Carolina Historical Commission;
- (2) The report and recommendations of the Commission have been received and considered by the Department of Cultural Resources; and
- (3) The Department has found that there is a feasible and practical method of providing funds for the maintenance and operation of such history museum.

In all cases where assistance is extended to nonstate owners of history museums, whether from State funds or otherwise, it shall be a condition of assistance that:

- (1) The museum assisted shall be accessible to the public at such times and upon such terms as the Department of Cultural Resources shall by rule prescribe;
- (2) Plans for the development of museum programs or projects be reviewed and approved by the Department of Cultural Resources;
- (3) The expenditure of such funds be supervised by the Department of Cultural Resources; and
- (4) Such expenditures be accounted to the Department in a manner and at such times as are satisfactory to it. (1973, c. 476, s. 48; 1979, c. 861, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, added the last two paragraphs. Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

For a symposium on historic preservation which includes a discussion of relevant North

§ 121-12. North Carolina Historical Commission.

(c) **Criteria for State Aid to Historic Properties.** — The Commission shall also prepare and adopt criteria for the evaluation of all properties of historic or archaeological importance owned by, under option to, or being considered for acquisition by a county, city, historic properties commission, or other organization or individual for which State aid or assistance is requested. The Commission shall investigate, evaluate, and prepare a written report on all historic or archaeological property for which State aid or appropriations are proposed. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

- (1) Whether the property is historically authentic;
- (2) Whether it is of such educational, historical, or cultural significance as to be essential to the development of a balanced State program of historic and archaeological sites and properties;
- (3) The estimated total cost of the project under consideration and the apportionment of said cost among State and nonstate sources;
- (4) Whether practical plans have been or can be developed for the funding of the nonstate portion of the costs;
- (5) Whether practical plans have been developed for the continued staffing, maintenance and operation of the property without State assistance; and
- (6) Such further comments and recommendations that the Commission may make.

(c1) **Criteria for State Aid to Historical Museums.** — The Commission shall also prepare and adopt criteria for the evaluation of all interpretive, security or climate control programs or projects to be installed in nonprofit history museums for which State aid or assistance is requested. The Commission shall investigate, evaluate, and prepare a written report on all interpretive, security, or climate control programs or projects for which State appropriations are proposed. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

- (1) The statewide educational significance and the qualitative level of the program or project and whether the program or project is essential to the development of a State program of historical interpretation;
- (2) The local or regional need for such a program or project;
- (3) The estimated total cost of the program or project under consideration and the apportionment of said cost among State and nonstate sources;
- (4) Whether practical plans have been or can be developed for the funding of the nonstate portions of the costs;
- (5) Whether practical plans have been developed for the continued staffing, maintenance, and operating of the museum without State assistance; and
- (6) Such further comments and recommendations that the Commission may make.

(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, archaeological, architectural, or other cultural value or significance, and to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds for the purpose of assisting a history museum, 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; 1979, c. 861, ss. 3-5.)

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).

The 1979 amendment, effective July 1, 1979, added "to Historic Properties" to the end of the catchline of subsection (c), added subsection (c1), and inserted "and to the chairman of each legislative committee to which is referred any

bill seeking an appropriation of State funds for the purpose of assisting a history museum" near the end of subsection (d).

As subsections (a) and (b) were not changed by the amendments, they are not 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 archaeological 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 archaeological 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.

§§ 121-29 to 121-33: Reserved for future codification purposes.

ARTICLE 4.

Conservation and Historic Preservation Agreements Act.

§ 121-34. Short title. — The title of this Article shall be known as the "Historic Preservation and Conservation Agreements Act." (1979, c. 747, s. 1.)

Editor's Note. — Session Laws 1979, c. 747, s. 10, provides: "This act is effective upon ratification [June 1, 1979] and applies only to agreement executed, created or entered into

after that date."

The heading of this Article as set out above is derived from § 121-42.

§ 121-35. Definitions. — Subject to any additional definitions contained in this Article, or unless the context otherwise requires:

- (1) A "conservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (iii) removal or destruction of trees, shrubs or other vegetation, (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (v) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (vi) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (vii) other acts or uses detrimental to such retention of land or water areas.
- (2) "Holder" means any public body of this State, including the State, any of its agencies, any city, county, district or other political subdivision or municipal or public corporation, or any instrumentality of any of the foregoing, any nonprofit corporation or trust, or any private corporation or business entity whose purposes include any of those stated in (1) and (3), covering the purposes of preservation and conservation agreements.
- (3) A "preservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant, condition or otherwise, in any deed, will or other instrument executed by or on behalf of the owner of the land or any improvement thereon, or in any other [order] of taking, appropriate to preservation of a structure or site historically significant for its architecture, archaeology or historical associations, to forbid or limit any or all (i) alteration, (ii) alterations in exterior or interior features of the structure, (iii) changes in appearance or condition of the site, (iv) uses not historically appropriate, or (v) other acts or uses supportive of or detrimental to appropriate preservation of the structure or site. (1979, c. 747, s. 2.)

§ 121-36. Applicability. — (a) This Article shall apply to all conservation and preservation agreements falling within its terms and conditions.

(b) This Article shall not be construed to make unenforceable any restriction, easement, covenant or condition which does not comply with the requirements of this Article.

(c) This Article shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain or otherwise and to use property of any kind for public purposes. (1979, c. 747, s. 3.)

§ 121-37. Acquisition and approval of conservation and preservation agreements. — Subject to the conditions stated in this Article, any holder may, in any manner, acquire, receive or become a party of a conservation agreement or a preservation agreement. (1979, c. 747, s. 4.)

§ 121-38. Validity of agreements. — (a) No conservation or preservation agreement shall be unenforceable because of

- (1) Lack of privity of estate or contract, or
- (2) Lack of benefit to particular land or person, or
- (3) The assignability of the benefit to another holder as defined in this Article.

(b) Such agreements are interests in land and may be acquired by any holder in the same manner as it may acquire other interests in land.

(c) Such agreements may be effective perpetually or for shorter stipulated periods of time.

(d) Such agreements may impose present, future, or continuing obligations on either party to the agreement, or their successors, in furtherance of the purposes of the agreement. (1979, c. 747, s. 5.)

§ 121-39. Enforceability of agreements. — (a) Conservation or preservation agreements may be enforced by the holder by injunction and other appropriate equitable relief administered or afforded by the courts of this State. Where appropriate under the agreement, damages, or other monetary relief may also be awarded either to the holder or creator of the agreement or either of their successors for breach of any obligations undertaken by either.

(b) Such agreements shall entitle representatives of the holder to enter the involved land or improvement in a reasonable manner and at reasonable times to assure compliance. (1979, c. 747, s. 6.)

§ 121-40. Assessment of land or improvements subject to agreement. — For purposes of taxation, land and improvements subject to a conservation or preservation agreement shall be assessed on the basis of the true value of the land and improvement less any reduction in value caused by the agreement. (1979, c. 747, s. 7.)

§ 121-41. Public recording of agreements. — (a) Conservation agreements shall be recorded in the office of the Register of Deeds of the county or counties in which the subject land or improvement is located, in the same manner as deeds are now recorded.

(b) Releases or terminations of such agreements shall be recorded in the same waiver. Releases or terminations, or the recording entry, shall appropriately identify by date, parties, and book and pages of recording, the agreement which is the subject of the release or termination. (1979, c. 747, s. 8.)

§ 121-42. Citation of article. — This Article shall be known and may be cited as "Uniform Conservation and Historic Preservation Agreement Act." (1979, c. 747, s. 9.)

Chapter 122.**Hospitals for the Mentally Disordered.****Article 1.****Organization and Management.**

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122-58.23. Long-term residential care for alcoholic who has not progressed in treatment.

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122-59. [Repealed.]

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122-60 to 122-65.2. [Repealed.]

122-65.5. [Repealed.]

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

Editor's Note. —

For comment analyzing North Carolina guardianship laws, see 54 N.C.L. Rev. 389 (1976).

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.

substituted "Mental Health and Mental Retardation Services" for "Mental Health Services" in the first sentence of the introductory paragraph.

Editor's Note. —

The 1977 amendment, effective July 1, 1977

§ 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 feeble-minded persons and to feeble-minded 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.

Sections 116-129 through 116-137, referred to in this section, were repealed by Session Laws 1963, c. 1184, s. 7.

§ 122-4. Designation of regions for the several State institutions for mentally disordered persons. — It shall be 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.

(c) Further, notwithstanding the provisions of subsection (a), any treatment facility as defined by G.S. 122-36(g) or by G.S. 122-56.2(b) shall furnish information in its possession regarding any present or former resident or patient of that treatment facility to any other such treatment facility upon request from the latter treatment facility if the resident or patient is presently seeking treatment from the requesting treatment facility or has been involuntarily committed to the requesting treatment facility for inpatient or outpatient treatment. In addition, any treatment facility shall furnish information in its possession regarding any present or former resident or patient upon request from the treatment facility which referred or previously referred the resident or patient to it. Under the circumstances described in this subsection, the consent of the patient or resident shall not be required in order for this information to be so furnished and the information shall be furnished pursuant to such requests despite objection by the patient or resident. (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; 1979, c. 147.)

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).

The 1979 amendment, effective July 1, 1979, added subsection (c).

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, Mental Retardation, and Substance Abuse 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, mental retardation, and substance abuse 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; 1979, c. 358, s. 26.)

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

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "Division of Mental Health, Mental Retardation, and Substance Abuse Services" for "Division of Mental Health and Mental Retardation

Services" near the beginning of the section, and inserted "mental retardation, and substance abuse" near the middle of the section.

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.

Section 122-35.23A, referred to in this section, has been repealed. For present provisions as to allocation of funds to area mental health authorities, see § 122-35.53 et seq.

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."

Section 122-35.23A, referred to in this section, has been repealed. For present provisions as to allocation of funds to area mental health authorities, see § 122-35.53 et seq.

§ 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, Mental Retardation, and Substance Abuse (Alcohol and Drug Abuse) 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, mental retardation, and substance abuse 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, mental retardation, and substance

abuse 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, mental retardation, and substance abuse program shall be selected by the county commissioners in the area where such services are to be administered. (1977, c. 568, s. 1; 1979, c. 358, s. 1.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" near the middle of the second paragraph, near the beginning of the third paragraph, and near the middle of the fourth paragraph.

Session Laws 1977, c. 568, s. 5, makes this Article effective July 1, 1977.

Session Laws 1979, c. 358, s. 8, effective July 1, 1979, changed the heading of this Article to its present wording from "Area Mental Health Programs."

For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

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

- (1) **Area Mental Health, Mental Retardation, and Substance Abuse 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, mental retardation, and substance abuse authority is a local political subdivision of the State except that a single-county area mental health, mental retardation, and substance abuse 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, Mental Retardation, and Substance Abuse 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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; 1979, c. 358, s. 2.)

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

The 1979 amendment, effective July 1, 1979, inserted "Mental Retardation, and Substance

Abuse" in the captions for subdivisions (1) and (2), and inserted "mental retardation, and substance abuse" near the beginning of the second sentence of subdivision (1), near the end of subdivision (2), and near the beginning of the first sentence of subdivision (20).

Part 2. Authorization of Area Mental Health, Mental Retardation, and Substance Abuse Services.

§ 122-35.37. Establishment of mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse authority. The mental health services programs shall be developed by coordinating resources, personnel, and facilities of the area mental health, mental retardation, and substance abuse 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 services 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; 1979, c. 358, ss. 3, 23.)

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.

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance

abuse" near the end of the second sentence, and near the middle of the third sentence.

Session Laws 1979, c. 358, s. 9, effective July 1, 1979, changed the heading of this Part to its present wording from "Authorization of Area Mental Health Services."

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

Nothing in this Chapter shall be construed to prohibit the operation of mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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; 1979, c. 358, ss. 4, 23.)

Editor's Note. — The 1979 amendment, middle of the first sentence, and inserted effective July 1, 1979, inserted "Mental "mental retardation, and substance abuse" Retardation, and Substance Abuse" near the throughout the section.

§ 122-35.39. Designation of the local governmental units to specify responsible area mental health, mental retardation, and substance abuse authority. — (a) An area mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse authority. County commissioners shall appoint the members of an area mental health, mental retardation, and substance abuse board who shall thereafter serve at the pleasure of the county commissioners by whom such appointments were made. The area mental health, mental retardation, and substance abuse board thus appointed shall be the area mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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; 1979, c. 358, ss. 5, 23.)

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

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" throughout the section.

§ 122-35.40. Structure of area mental health, mental retardation, and substance abuse board. — (a) The area mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse board shall include:

- (1) At least one county commissioner from each county in the area, except that in a single-county area mental health, mental retardation, and substance abuse authority the board of commissioners may instead appoint any resident of the county;
- (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, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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; 1979, c. 358, ss. 6, 23, c. 455.)

Editor's Note. —

The first 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" throughout the section.

The second 1979 amendment added the exception at the end of subdivision (1) of subsection (b).

Pursuant to Session Laws 1979, c. 358, s. 26, effective July 1, 1979, "mental retardation and substance abuse" has been inserted in subdivision (b)(1) of this section as amended by Session Laws 1979, c. 455.

§ 122-35.40A. Compensation of area mental health, mental retardation, and substance abuse board members. — (a) Area board members may receive as compensation for their services per diem and a subsistence allowance for each day during which they are engaged in the official business of the board. Rates will be established by the board and they shall not exceed those rates authorized by G.S. 138-5 for State boards.

(b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board. (1979, c. 358, s. 28.)

Editor's Note. — Session Laws 1979, c. 358, s. 33, makes this section effective July 1, 1979.

§ 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, mental retardation, and substance abuse 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 procedure set forth in G.S. 122-35.52. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, 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.

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" near the beginning of the fourth sentence.

Part 3. Responsibilities of Area Mental Health, Mental Retardation, and Substance Abuse 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.)

Editor's Note. — Session Laws, c. 358, s. 10, effective July 1, 1979, changed the heading of this Part to its present wording from "Responsibilities of Area Mental Health Authorities."

§ 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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; 1979, c. 358, s. 12.)

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).

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" near the beginning of subsection (a) and near the beginning of the fourth sentence of subsection (b).

§ 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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 biennially thereafter, reports required of the area mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse authority fails to file required reports within the time limit set by the Department. (1977, c. 568, s. 1; 1979, c. 358, ss. 13, 30.)

Editor's Note. — The 1979 amendment, the section, and substituted "biennially" for effective July 1, 1979, inserted "mental retardation, and substance abuse" throughout "biannually" near the beginning of subsection

§ 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, mental retardation, and substance abuse 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, Mental Retardation, and Substance Abuse Authority Employees.** — Employees under the direct supervision of the area mental health, mental retardation, and substance abuse authority are employees of the area mental health, mental retardation, and substance abuse 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, Mental Retardation, and Substance Abuse Director.** — The area board shall appoint, with the approval of the Department of Human Resources, an area mental health, mental retardation, and substance abuse director. The area mental health, mental retardation, and substance abuse 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 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; 1979, c. 358, s. 14.)

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).

The 1979 amendment, effective July 1, 1979,

inserted "Mental Retardation, and Substance Abuse" in the catchlines to subsections (b) and (c), and inserted "mental retardation, and substance abuse" throughout subsections (a), (b), and (c).

§ 122-35.46. Salary plans for area mental health, mental retardation, and substance abuse employees. — A salary plan for area mental health, mental retardation, and substance abuse employees shall be set by the area mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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; 1979, c. 358, ss. 15, 23.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" throughout the section.

§ 122-35.47. Require fee for service. — The area mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse service program and shall not reduce or replace the budgeted commitment of local tax revenue. (1977, c. 568, s. 1; 1979, c. 358, s. 16.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" throughout the section.

§ 122-35.48. Limitation of professional reimbursement. — Area mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse authority. (1977, c. 568, s. 1; 1979, c. 358, s. 17.)

Editor's Note. —

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" throughout the section.

§ 122-35.49. Contract for services. — The area mental health, mental retardation, and substance abuse 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse authority to monitor the contract to assure that minimum standards are met. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 18.)

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.

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" throughout the section.

§ 122-35.50. Appeal by area mental health, mental retardation, and substance abuse authority. — The area mental health, mental retardation, and substance abuse 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; 1979, c. 358, s. 19.)

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

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" near the beginning of the section.

§ 122-35.51. Licensing required. — An area mental health, mental retardation, and substance abuse 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; 1979, c. 358, s. 20.)

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.

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" near the beginning of the first 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, mental retardation, and substance abuse 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; 1979, c. 358, s. 21.)

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.

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" near the beginning of the second sentence.

Part 4. Appropriations for Mental Health, Mental Retardation,
and Substance Abuse Service Programs.

§ 122-35.53. Allocation of all funds to area mental health, mental retardation, and substance abuse authorities. — (a) All State appropriations shall be allocated to area mental health, mental retardation, and substance abuse authorities in accordance with the annual plan and budget adopted by the area mental health, mental retardation, and substance abuse authority and approved by the Department of Human Resources. However, the area mental health, mental retardation, and substance abuse authorities are empowered to receive and allocate non-State resources for the purpose of capital improvements and equipment acquisitions as long as such expenditures are made in the 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.

(b) Unless otherwise specified by the Department of Human Resources, State appropriations to area mental health, mental retardation, and substance abuse authorities shall be used exclusively for the operating costs of the programs. Provided, however:

(1) The Department may specify that designated State funds may be used by the area mental health, mental retardation, and substance abuse authorities in contracting with private, nonprofit corporations operating group homes for the mentally retarded, mentally ill, or substance abuser.

(2) Such State funds may be used under the terms of the contract between the authority and the private, nonprofit corporation to make a lump sum down payment or periodic payments on a real property mortgage in the name of such private, nonprofit corporation; however, upon termination, default, or nonrenewal of the contract by either party thereto, in the discretion of the Department of Human Resources State funds spent as mortgage payments shall be returned to the authority from said corporation in accordance with the rules and regulations adopted by the Department.

(3) A private nonprofit corporation receiving funds under this subsection shall be subject to the provisions of G.S. 159-40 which apply to private nonprofit corporations.

(c) All real property purchased for use by the area mental health, mental retardation, and substance abuse authority shall be provided by local or federal funds and the title to such real property and the authority to acquire same shall be held by the county where the property is located.

(d) The authority to lease real property shall be held by the area mental health, mental retardation, and substance abuse authority.

(e) Equipment necessary for the operation of the area mental health, mental retardation, and substance abuse authorities shall be provided by the local, State, federal or donated funds or any combination thereof.

(f) Title to personal property and the authority to acquire or lease same, including lease-purchase arrangements, shall be held by the area mental health, mental retardation, and substance abuse authority.

(g) 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 such 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, mental retardation, or substance

abuse 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; 1979, c. 358, s. 29.)

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.

The 1979 amendment, effective July 1, 1979, divided the section into subsections, inserted "mental retardation, and substance abuse" in three places in subsection (a) and in the first sentence of subsection (b), inserted "otherwise" in the first sentence and added the second sentence, including subdivisions (1), (2) and (3), in

subsection (b), rewrote the former second sentence of the second paragraph as subsections (c) and (d), and substituted "the area mental health, mental retardation and substance abuse authorities" for "such programs" in subsection (e).

Session Laws 1979, c. 358, s. 11, effective July 1, 1979, changed the heading of this Part to its present wording from "Appropriations for Mental Health Services Programs."

§ 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, mental retardation, and substance abuse 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, mental retardation, and substance abuse authorities on the conditions and formula basis as provided in this Part. (1977, c. 568, s. 1; 1979, c. 358, s. 22.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" near the end

of the first sentence and near the middle of the third sentence.

§ 122-35.55. Allocation of State matching funds to area mental health, mental retardation, and substance abuse 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 biennially by the Department. Area mental health, mental retardation, and substance abuse funds used for matching State funds shall include, but not be limited to, fees from services (including Medicare and the local and federal share of Medicaid receipts), 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; 1979, c. 358, ss. 31, 32.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "biennially" for "biannually" near the end of the second sentence, and inserted "mental retardation, and

substance abuse" near the beginning of the third sentence and "(including Medicare and the local and federal share of Medicaid receipts)" near the middle of the third sentence.

§ 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, mental retardation, and substance abuse 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 122-35.55. (1977, c. 568, s. 1; 1979, c. 358, s. 24.)

Editor's Note. —

The 1979 amendment, effective July 1, 1979,

inserted "mental retardation, and substance abuse" near the middle of the first sentence.

§ 122-35.57. Responsibilities of those receiving State and federally administered appropriations. — All resources allocated to and received by any area mental health, mental retardation, and substance abuse 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; 1979, c. 358, s. 25.)

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.

The 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" near the middle of the section.

ARTICLE 3.

Admission of Patients; General Provisions; Patients' Rights.

Part 1. Admission of Patients; General Provisions.

§ 122-36. Definitions.

(d) (i) The words "mental illness" shall mean: When applied to an adult, an illness which so lessens the capacity of the person to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance or control. The words "mentally ill" shall mean an adult person with a mental illness; or (ii) when applied to a minor shall mean a mental condition, other than mental retardation alone, which so lessens or impairs the youth's capacity either to develop or exercise age appropriate or age adequate self-control, judgment, or initiative in the conduct of his activities and social relationships as to make it necessary or advisable for him to be under treatment, care, supervision, guidance or control.

(e) The words "mentally retarded" refer to a person who has significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during his developmental period.

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

(g) "Treatment facility" shall 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 mental retardation, any center or facility operated by the State of North Carolina for the care, treatment, or rehabilitation of inebriates, any community mental health clinic or center operated pursuant to Article 2F of this Chapter, and any private hospital as specified in G.S. 122-72 and 122-72.1.

(1973, c. 1408, s. 3; 1979, c. 164, s. 4; c. 171, s. 2; c. 751, s. 28.)

Editor's Note. —

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

The first 1979 amendment, effective October 1, 1979, deleted "The words" at the beginning of subsection (g), deleted "and" after "inebriates" near the end of subsection (g) and substituted "operated pursuant to Article 2F of this Chapter, in any private hospital as specified in G.S. 122-72 and G.S. 122-72.1" for "administered

by the State of North Carolina" at the end of subsection (g).

The second 1979 amendment, effective October 1, 1979, inserted "(1) when applied to an adult" near the beginning of the first sentence of subsection (d), deleted "his customary" before "self-control" near the middle of that sentence, inserted "an adult" near the beginning of the second sentence of subsection (d), and added everything following "mental illness" in that sentence.

The third 1979 amendment, effective Jan. 1, 1980, rewrote subsection (e).

As the other subsections were not changed by the amendments, 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 was virtually the same definition contained in subsection (d) prior to the 1979 amendment. 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.

The Provisions of G.S. 122-55.1 Through G.S. 122-55.14 Do Apply to Services Provided for an

Area Mental Health Authority (By a General Hospital, etc.) on a Contractual Basis. — See opinion of Attorney General to Mr. R.J. Bickel, Deputy Director for Administration, Division of Mental Health and Mental Retardation Services, 48 N.C.A.G. 1 (1978).

§ 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.

Editor's Note. — For comment on due process in North Carolina's mental health laws, see 52 N.C.L. Rev. 589 (1974).

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, any area mental health facility operated pursuant to Article 2F of this Chapter, and any private hospital for the mentally disordered as described in G.S. 122-72 and 122-72.1. (1973, c. 723, s. 1; c. 1084; 1979, c. 171, s. 3.)

Editor's Note. — Subsection (f) of § 122-36, defining "qualified physician," was repealed by Session Laws 1973, c. 1408, s. 3.

The 1979 amendment, effective October 1, 1979, deleted "and" after "inebriety" and substituted "area mental health facility

operated pursuant to Article 2F of this Chapter, and any private hospital for the mentally disordered as described in G.S. 122-72 and 122-72.1" for "community mental health clinic or center operated in conjunction with the State" at the end.

§ 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 benefited 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, cert. denied, 288 N.C. 241, 217 S.E.2d 665 (1975).

Minor is entitled to protection of due process procedures. *In re Long*, 25 N.C. App. 702, 214 S.E.2d 626, cert. denied, 288 N.C. 241, 217 S.E.2d 665 (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, cert. denied, 288 N.C. 241, 217 S.E.2d 665 (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. No petition shall be necessary; the written application for voluntary admission shall serve as the initiating document for the hearing.

(b) The court shall determine whether such person is mentally ill or an inebriate and is in need of further treatment at the treatment facility. Further treatment at the treatment facility should be undertaken only when lesser measures will be insufficient. If the court finds by clear, cogent, and convincing evidence, that these requirements have been met, the court shall concur with the voluntary admission of the minor or person adjudicated non compos mentis. If the court finds that these requirements have not been met, it shall order that the person be released. A finding of dangerousness to self or others is not necessary to support the determination that further treatment should be undertaken.

(c) Mental illness in a minor shall have the meaning provided in G.S. 122-36(d)(ii). **Mental illness for an adult adjudicated non compos mentis shall have the meaning provided in G.S. 122-36(d)(i).** The word “inebriate” shall have the meaning provided in G.S. 122-36(c).

(d) When, in the case of a minor, it appears that an extended period of inpatient diagnostic evaluation is necessary before a recommendation can be made to the court, the chief clinical officer or his designee may request hospitalization not to exceed 30 days for diagnosis and evaluation. The following procedures shall apply:

- (1) At least 48 hours in advance of the regularly calendared hearing provided in subsection (a) above, the chief clinical officer or his designee shall give written notice to the clerk of superior court, the respondent, the parent or parents, guardian, or person standing in loco parentis, and the attorneys for all parties, that diagnosis and evaluation of the minor cannot be completed prior to the calendared hearing, and that he will request that the court authorize a period of hospitalization not to exceed 30 days for the purpose of diagnosing and evaluating the minor.
- (2) The court will determine whether there exists reasonable grounds to believe:
 - a. That the minor is probably mentally ill or an inebriate and;
 - b. That the minor may, upon diagnosis and evaluation, be found to meet the criteria for admission as set out in (b) above; and
 - c. That additional time is required to complete the diagnosis and evaluation.
- (3) If the court finds that the criteria set out in subdivision (d)(2) above have been met, it shall authorize a period of hospitalization for diagnosis and evaluation, not to exceed 30 days, and establish a new date for the hearing provided in subsection (a) above, to occur by the end of the specified period. During this period, medical, psychiatric, psychological, educational, and social evaluation shall be undertaken and reasonable and appropriate medication and treatment administered, consistent with Part 3 of Article 3 of this Chapter, and accepted medical standards.

(4) If the court does not make findings of fact as set out in subdivision (d)(2) above, the minor shall be ordered released.

(e) Unless otherwise provided in G.S. 122-56.7, the hearings specified in (b) and (d) above, and all subsequent proceedings shall be governed by the involuntary commitment procedures of Article 5A of Chapter 122 of the General Statutes. 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 counsel.

(f) After admission, only the court or the treatment facility may release the minor or person adjudicated non compos mentis at any time when either determines that such person does not need further hospitalization.

(g) In addition to the notice of hearings and rehearings to the respondent and his counsel required under G.S. 122-58.5 and 122-11(a) [122-58.11(a)] respectively, notice shall be given by the clerk to the person who signed the application for voluntary admission, or his successor, in accordance with the provisions of G.S. 122-58.20. The person who signed the application for voluntary admission, or his successor, may also file a written waiver of his right to receive notice with the clerk of court. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1.)

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

The 1979 amendment, effective October 1, 1979, rewrote the section.

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.

§ 122-56.10. Voluntary admission of inmates from the Department of Correction to Regional Mental Health Facilities. — (a) Inmates in the custody of the Department of Correction may seek voluntary admission to regional psychiatric facilities for mental illness or inebriety. Such admission may be accomplished only when the Secretary of Human Resources or his designee and the Secretary of Correction or his designee jointly agree to the inmate's request.

(b) The provisions of G.S. 122-56.3 shall apply to the voluntary admission of inmates; however, upon discharge of a voluntarily admitted inmate, the Department of Correction shall take custody of such inmate if the inmate's term of incarceration has not been completed.

(c) The Department of Correction is responsible for the security and costs of transporting inmates to and from regional psychiatric facilities for the purpose of accomplishing a voluntary admission. (1979, c. 547.)

Editor's Note. — Session Laws 1979, c. 547, s. 2, makes this act effective July 1, 1979.

§ 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 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; 1979, c. 915, s. 2.)

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.

The 1979 amendment, effective October 1, 1979, deleted "imminently" before "dangerous" near the beginning of the section.

For comment on due process in North Carolina's mental health laws, see 52 N.C.L. Rev. 589 (1974).

For a survey of 1977 constitutional law, see 56 N.C. L. Rev. 943 (1978).

Proceeding Is of Civil Nature. — An involuntary commitment proceeding under Article 5A of G.S., c. 122, is a proceeding of a civil nature which is governed by pertinent Rules of Civil Procedure. In re Underwood, 38 N.C. App. 344, 247 S.E.2d 778 (1978).

Requirement That Person Be Dangerous. — By requiring that the person be found dangerous to herself or others, the legislature has made it clear that involuntary commitment is not for all those who are mentally ill, or even for those whose mental illness may make it necessary for them to have custodial care. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

Where the doctor testified only that the respondent was unable to care for herself, and

that she was a complete nursing care problem, there was no showing that the respondent was dangerous to herself and the requirements for involuntary commitment were not met. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

Judge May Commit Individual to Private Hospital Designated by Department. — A district court judge acting under this Article may involuntarily commit an individual to a private hospital for the mentally ill if that hospital has been designated or licensed by the Department of Human Resources. Opinion of Attorney General to Mr. Ben Sauber, Director of Advocate Program, Dorothea Dix Hospital, 47 N.C.A.G. 30 (1977).

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); In re Caver, 40 N.C. App. 264, 252 S.E.2d 284 (1979).

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

(1) The phrase "dangerous to himself or others" when used in this Article is defined as follows:

a. "Dangerous to himself" shall mean that within the recent past:

1. The person has acted in such manner as to evidence:

I. That he would be unable without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

II. That there is a reasonable probability of serious physical debilitation to him within the near future unless adequate treatment is afforded pursuant to this Article. A showing of behavior that is grossly irrational or of actions which the person is unable to control or of behavior that is grossly inappropriate to the situation or other evidence of severely impaired insight and judgment shall create a prima facie inference that the person is unable to care for himself; or

2. The person has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is afforded under this Article; or

3. The person has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is afforded under this Article.

b. "Dangerous to others" shall mean that within the recent past, the person has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another or has acted in such a manner as to create a substantial risk of serious bodily harm to another and that there is a reasonable probability that such conduct will be repeated.

- (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.
- (5) "Community mental health center" or "community mental health facility" means any mental health center or clinic operated by or under the supervision of an area mental health, mental retardation, and substance abuse board or area mental health, mental retardation, and substance abuse authority pursuant to Article 2F of this Chapter.
- (6) "Regional mental health facility" and "regional psychiatric facility" mean any one of the following: Broughton Hospital in Morganton, John Umstead Hospital at Butner, Dorothea Dix Hospital in Raleigh, or Cherry Hospital in Goldsboro.
- (7) "Mental health facility" and "treatment facility" mean any community mental health center, any regional mental health facility, any private mental health facility licensed or designated by the Department of Human Resources pursuant to Article 10 of this Chapter, or the psychiatric services of Memorial Hospital of The University of North Carolina at Chapel Hill. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, ss. 2, 12; 1979, c. 164, s. 3; c. 358, s. 26; c. 915, s. 1.)

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).

The first 1979 amendment, effective October 1, 1979, added subdivisions (5), (6), and (7).

The second 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" in two places in subdivision (5).

The third 1979 amendment, effective October 1, 1979, rewrote subdivision (1).

Applied in *In re Lee*, 35 N.C. App. 655, 242 S.E.2d 211 (1978).

Cited in *In re Carter*, 25 N.C. App. 442, 213 S.E.2d 409 (1975); *In re Doty*, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

§ 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 dangerous to himself or others, or who is mentally retarded and, because of an accompanying behavior disorder, is 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 dangerous to himself or others, or is mentally retarded and, because of an accompanying behavior disorder, is 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) Any 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. If a physician executes an affidavit for commitment of a respondent already hospitalized or presented for hospitalization at a mental health facility described in G.S. 122-58.4(c), a second qualified physician, not treating the patient, shall be required to perform the examination required by G.S. 122-58.6. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 915, ss. 3, 18.)

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).

The 1979 amendment, effective October 1, 1979, deleted "imminently" before "dangerous" throughout subsections (a) and (b), and added the third sentence to subsection (d).

Insufficient affidavit. — An affidavit which stated that the respondent was "believed to have been on drugs for a number of years," and was "so mixed up," and was "at a place where he is dangerous to himself" was insufficient to establish reasonable grounds for the issuance of a custody order. *In re Reed*, 39 N.C. App. 227, 249 S.E.2d 864 (1978).

A commitment order is essentially a judgment by which a person is deprived of his liberty, and as a result, he is entitled to the safeguard of a determination by a neutral officer of the court that reasonable grounds exist for his original detention just as he would

be if he were to be deprived of liberty in a criminal context. *In re Reed*, 39 N.C. App. 227, 249 S.E.2d 864 (1978).

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).

Cited in *In re Underwood*, 38 N.C. App. 344, 247 S.E.2d 778 (1978).

§ 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 dangerous to himself or others, or is not mentally retarded or lacks a behavior disorder which would cause the individual to be 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 dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is 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, Mental Retardation, and Substance Abuse 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; 1979, c. 358, s. 27; c. 915, s. 4.)

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).

The first 1979 amendment, effective July 1, 1979, substituted "Division of Mental Health, Mental Retardation, and Substance Abuse Services" for "Division of Mental Health and Mental Retardation Services" near the end of the fourth sentence of subsection (c).

The second 1979 amendment, effective October 1, 1979, deleted "imminently" before "dangerous" throughout the second and third sentences of subsection (c).

Duty of Physician to Make Examination. — It is the purpose of this section that only mentally ill persons in need of restraint be

deprived of their liberty. This can only be assured by the doctor making the required examination before executing the certificate. *McLean v. Sale*, 38 N.C. App. 520, 248 S.E.2d 372 (1978).

This section imposes a positive duty to make the examination before signing the certificate. *McLean v. Sale*, 38 N.C. App. 520, 248 S.E.2d 372 (1978).

An intentional or negligent violation of the physician's duty to make an examination cannot be the subject of immunity. *McLean v. Sale*, 38 N.C. App. 520, 248 S.E.2d 372 (1978).

Relief from Wrongful Certification. — A complaint which alleged that the defendant had certified that he had examined the plaintiff pursuant to this section and recommended commitment when in fact the plaintiff had not been examined by the defendant was sufficient to state a claim for which relief could be granted for wrongful certification of the plaintiff for admission to a mental hospital. *McLean v. Sale*, 38 N.C. App. 520, 248 S.E.2d 372 (1978).

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); *In re Williamson*, 36 N.C. App. 362, 244 S.E.2d 189 (1978).

§ 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 dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is 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; 1979, c. 915, 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.

The 1979 amendment, effective October 1, 1979, deleted "imminently" before "dangerous" in two places near the middle of 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 dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is 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 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; 1979, c. 915, 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).

The 1979 amendment, effective October 1, 1979, deleted "imminently" before "dangerous"

in three places in the second and third sentences of subsection (a).

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

Cited in *In re Jacobs*, 38 N.C. App. 573, 248 S.E.2d 448 (1978).

§ 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 attorney who is a member of the staff of the Attorney General assigned to one of the State's four regional psychiatric facilities shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held at the hospital to which he is assigned under Articles 4 and 5A of Chapter 122 of the General Statutes of North Carolina. Each of these attorneys shall also provide the liaison and consultation services necessary for these matters.

(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 dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is 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; 1979, c. 915, ss. 7, 13.)

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).

The 1979 amendment, effective October 1, 1979, rewrote subsection (b), and deleted "imminently" before "dangerous" near the middle and near the end of the first sentence of subsection (i).

For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

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).

Where the tenth day following the day the respondent was taken into custody was a Sunday, the hearing called for the following Monday was in apt time. In *re Underwood*, 38 N.C. App. 344, 247 S.E.2d 778 (1978).

Denial of Right to Hearing. — Where the trial court continued the respondent's hearing, over objection, for seven days, and the State failed at the originally scheduled hearing to offer any evidence or to come forward with even a copy of the magistrate's order of commitment or the petition for involuntary commitment, the result was that respondent was denied his right to a hearing before the district court within 10 days of confinement. In *re Jacobs*, 38 N.C. App. 573, 248 S.E.2d 448 (1978).

Granting of Continuance. — The language of subsection (a) of this section is plain and unambiguous. The granting of a continuance for five days is within the discretion of the trial judge only on the motion of respondent. In *re Jacobs*, 38 N.C. App. 573, 248 S.E.2d 448 (1978).

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).

Burden of Proof on State. — Subsection (a) of this section indicates a conscious legislative decision to place the burden on the State to come forward with evidence to justify the commitment within 10 days. In *re Jacobs*, 38 N.C. App. 573, 248 S.E.2d 448 (1978).

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).

Assuming without conceding that a physician's brief statement and conclusion as to the imminent danger of the respondent would support a recommitment order, his failure to appear at the hearing deprived the respondent of his right of confrontation and cross-examination. In *re Mackie*, 36 N.C. App. 638, 244 S.E.2d 450 (1978).l

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

The two distinct ultimate facts of (1) mental illness or inebriacy and (2) imminent danger must be supported by facts which are found from the evidence and recorded by the district court. In re Williamson, 36 N.C. App. 362, 244 S.E.2d 189 (1978).

The statutory mandate requires as a condition to a valid commitment order that the district court must find, first, that respondent is mentally ill or inebriate as defined in § 122-36; and second, that respondent is dangerous to himself or others as defined in § 122-58.2. In re Bartley, 40 N.C. App. 218, 252 S.E.2d 553 (1979).

No Requirement that Findings Be Based Solely on Medical Evidence. — The involuntary commitment statutes do not require that an order of commitment may issue only when the requisite factual findings are supported by competent medical evidence. All that is required is that the court make the essential findings from "clear, cogent, and convincing evidence." In re Underwood, 38 N.C. App. 344, 247 S.E.2d 778 (1978).

The words "imminently dangerous" which formerly appeared 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).

By formerly requiring that the person be found imminently dangerous to herself or others, the legislature had made it clear that involuntary commitment was not for all those who were mentally ill, or even for those whose mental illness made it necessary for them to have custodial care. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

Where the doctor testified only that the respondent was unable to care for herself, and that she was a complete nursing care problem, there was no showing that the respondent was dangerous to herself and the requirements for involuntary commitment were not met. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

Threats as Evidence of Dangerousness. — The fundamental differences between a criminal charge based entirely on threats and an involuntary commitment in which threats merely serve as some evidence of the dangerousness of the person weigh against the use of such strict standards in the latter case. In re Williamson, 36 N.C. App. 362, 244 S.E.2d 189 (1978).

No Overt Act Required. — An overt act may be clear, cogent and convincing evidence which will support a finding of 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).

It is for the trier of fact to determine whether evidence offered in a particular case is clear, cogent, and convincing. In re Underwood, 38 N.C. App. 344, 247 S.E.2d 778 (1978).

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).

Recording of Findings Mandatory. — The direction to the court under subsection (i) to record the facts which support its findings is mandatory. In re Koyi, 34 N.C. App. 320, 238 S.E.2d 153 (1977); In re Jacobs, 38 N.C. App. 573, 248 S.E.2d 448 (1978).

The direction to the court to record facts which support its findings is mandatory. In re Bartley, 40 N.C. App. 218, 252 S.E.2d 553 (1979); In re Caver, 40 N.C. App. 264, 252 S.E.2d 284 (1979).

Effect of Discharge on Challenge to Involuntary Commitment. — Discharge does not render questions challenging the involuntary commitment proceeding moot in view of the adverse consequences which could arise therefrom, including the possibility that the commitment could form the basis of a future commitment. In re Williamson, 36 N.C. App. 362, 244 S.E.2d 189 (1978).

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 dangerous to himself or others or is not mentally retarded or lacks a behavior disorder which would cause the individual to be 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 dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is dangerous to others, it may order treatment, inpatient or outpatient, or a combination of both 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. The court shall make findings of facts as to the availability and appropriateness of available outpatient treatment before ordering outpatient treatment. If the court has sufficient evidence to order commitment, but lacks sufficient evidence to determine if the commitment should be to an inpatient or outpatient facility, or a combination of both, the court may continue the case for disposition for not more than seven days for the production of evidence to help in determining such disposition. Such continuance may be granted on motion of special counsel, Attorney General representing the State's interest, or on the court's own motion. 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 area mental health, mental retardation, and substance abuse authority and the private facility. If the court orders outpatient treatment a copy of the court order will be sent to the outpatient treatment facility to which the respondent was committed.

(c) If the court orders outpatient treatment, and the respondent fails to adhere to the prescribed outpatient treatment program, the director of the mental health center or his designee shall promptly notify the Attorney General representing the State's interest. The Attorney General representing the State's interest then shall notify the clerk of superior court of the county in which the respondent was committed for outpatient treatment and the clerk of superior court in the county where the inpatient mental health facility is located. Upon receipt of written or oral notice from the Attorney General representing the State's interest, the clerk of the county in which the respondent was committed for outpatient treatment shall issue a custody order, authorizing a law-enforcement officer to take the respondent into custody and transport him to the appropriate mental health facility. Before the respondent is transported

to a private mental health facility, the director of the facility must agree to the admission.

When the respondent is returned to the appropriate mental health facility, the clerk of superior court in that county shall calendar a supplemental hearing to be held within 10 days of the time the respondent was taken into custody.

At the supplemental hearing the court must find by clear, cogent, and convincing evidence:

- (1) That the respondent had been given a copy of his prescribed outpatient treatment plan and the plan had been explained to the respondent;
- (2) That the respondent had not adhered to the prescribed outpatient treatment program; and
- (3) That the respondent meets the criteria for commitment as set out above in subsection (b).

Upon such findings, the court may 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; 1979, c. 358, s. 26; c. 915, ss. 8, 15, 16.)

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).

The first 1979 amendment, effective July 1, 1979, inserted "mental retardation, and substance abuse" in the present fifth sentence of subsection (b).

The second 1979 amendment, effective October 1, 1979, deleted "imminently" before "dangerous" throughout subsections (a) and (b), inserted "or a combination of both" near the middle of the first sentence of subsection (b); added the second, third, fourth, and sixth

sentences to subsection (b), substituted "area mental health authority" for "county" near the end of the fifth sentence of subsection (b), and rewrote subsection (c).

Finding of Dangerousness. — By requiring that the person be found dangerous to herself or others, the legislature has made it clear that involuntary commitment is not for all those who are mentally ill, or even for those whose mental illness may make it necessary for them to have custodial care. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

Where the doctor testified only that the respondent was unable to care for herself, and that she was a complete nursing care problem, there was no showing that the respondent was dangerous to herself and the requirements for involuntary commitment were not met. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

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. — 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 the commitment, unless so ordered by the Court of Appeals. The Attorney General shall represent the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Article. (1973, c. 726, s. 1; c. 1408, s. 1; 1979, c. 915, s. 19.)

Editor's Note. — The 1979 amendment, effective October 1, 1979, deleted "The" at the beginning of the first sentence, inserted "the" after "stay" in the third sentence, substituted "State's interest" for "petitioner" in the fourth sentence, and added the fifth sentence.

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 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 to 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 dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is dangerous to others, and in need of continued hospitalization, or, in the alternative, in need of outpatient care, or a combination of both, it may order hospitalization (or outpatient care, as the case may be) for an additional period not in excess of 180 days. If outpatient commitment is ordered and the respondent fails to adhere to the prescribed treatment program, a supplemental hearing may be held as in G.S. 122-58.8(c) above.

(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, in need of outpatient treatment, or a combination of both, he 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; 1979, c. 915, ss. 9, 17.)

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).

The 1979 amendment, effective October 1, 1979, substituted "to" for "and" near the end of the second sentence of subsection (d), deleted "imminently" before "dangerous" in two places near the middle of the third sentence of subsection (d) and inserted "in need" and "or a combination of both" near the middle of that sentence, and added the fourth sentence of subsection (d), and inserted "in need" and "or a combination of both, he" near the end of the first sentence in subsection (e).

Findings Prerequisite to Commitment. — In order to support the recommitment of a respondent in an involuntary commitment proceeding, the trial court must find, by clear, cogent, and convincing evidence that the respondent is mentally ill or inebriate, and dangerous to himself or others, and in need of continued hospitalization. In re Mackie, 36 N.C. App. 638, 244 S.E.2d 450 (1978).

The two ultimate facts of (1) mental illness or inebriacy, and (2) imminent danger, must be supported by facts which are found from the evidence and recorded by the district court. In re Mackie, 36 N.C. App. 638, 244 S.E.2d 450 (1978).

The words "imminently dangerous" which formerly appeared in subsection (d) simply

mean that a person poses a danger to himself or others in the immediate future. In re Ballard, 34 N.C. App. 228, 237 S.E.2d 541 (1977).

An overt act may be clear, cogent and convincing evidence which will support a finding of imminent danger, but it is not necessary that there be an overt act to establish imminent dangerousness. In re Ballard, 34 N.C. App. 228, 237 S.E.2d 541 (1977).

Disposition If Notice Is Insufficient. — The 15-day period of subsection (e) of this section does not have the effect of a statute of limitations, so that a proceeding brought on less notice must be dismissed. Dismissal is too drastic, and unless the respondent can show some prejudice the proper action would be to continue the proceeding until ample notice has been given. In re Boyles, 38 N.C. App. 389, 247 S.E.2d 785, appeal dismissed, 296 N.C. 411, 251 S.E.2d 468 (1978).

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).

Cited in In re Jacobs, 38 N.C. App. 573, 248 S.E.2d 448 (1978).

§ 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.

(c) In providing the transportation required by this section, the law-enforcement officer or other governmental employee may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. No law-enforcement officer or other governmental employee may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of this Article.

(d) Notwithstanding the provisions of subsection (a) of this section, a clerk, a magistrate, or a district court judge where applicable may authorize the family or immediate friends of the respondent, if they so request, to transport the respondent in accordance with the procedures of this Article. Such authorization shall only be granted in cases where the danger to the public, the family or friends of the respondent, or the respondent himself is not substantial. The family or immediate friends of the respondent shall bear the costs of providing such transportation. (1973, c. 1408, s. 1; 1979, c. 915, ss. 21, 22.)

Editor's Note. — The 1979 amendment, effective October 1, 1979, added subsections (c) and (d).

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. Trevor, 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, mental retardation, and substance abuse programs shall submit for approval by the Division of Mental Health, Mental Retardation, and Substance Abuse 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; 1979, c. 358, ss. 26, 27.)

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.

The 1979 amendment, effective July 1, 1979 substituted "area mental health, mental retardation, and substance abuse programs" for

"area mental health programs" near the beginning of the first sentence, and substituted "Division of Mental Health, Mental Retardation, and Substance Abuse Services" for "Division of Mental Health and Mental Retardation Services" near the middle of 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 dangerous to others. — A person who is mentally retarded, and because of an accompanying behavior disorder, is 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, Mental Retardation, and Substance Abuse 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; 1979, c. 358, s. 27; c. 915, s. 10.)

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.

The first 1979 amendment, effective July 1, 1979, substituted "Division of Mental Health, Mental Retardation, and Substance Abuse Services" for "Division of Mental Health and

Mental Retardation Services" near the end of the first sentence.

The second 1979 amendment, effective October 1, 1979, deleted "imminently" before "dangerous" near the beginning of the first sentence.

Session Laws 1977, c. 400, s. 13, makes the act effective July 1, 1977.

§ 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.

§ 122-58.22. Short-term treatment for alcoholic in need of care. — (a) A district court judge may take any one or more of the actions specified in subsection (e) if he finds that a person is an alcoholic and is in need of care. A person is an alcoholic if he habitually lacks self-control as to the use of intoxicating liquor, or uses intoxicating liquor to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted. An alcoholic is in need of care if his alcoholism is presently causing him to lose control over his own actions to the extent that he regularly has to depend on others to provide food, clothing, shelter, medical or other essential care for him.

(b) The alleged alcoholic may be brought before the district court judge under G.S. 14-446 after being found not guilty by reason of alcoholism of the offense of being intoxicated and disruptive in a public place, or under G.S. 122-65.11 after being assisted while intoxicated in public.

(c) If he believes it will be of value in making his determination, the district court judge may direct an alcoholism court counselor, if available, to conduct a prehearing review of the alleged alcoholic's drinking history and make recommendations on proper disposition for the person if he is found to be an alcoholic in need of care.

(d) If the alleged alcoholic is an indigent within the meaning of G.S. 7A-450, and does not waive counsel, the clerk of court or the district court judge shall appoint counsel to represent him. At the hearing in district court the alleged alcoholic shall be entitled to confront and cross-examine witnesses. The hearing may be held in chambers. If the person is found to be an alcoholic in need of care and ordered to participate in a treatment program as provided in subdivision (e)(2), the judge shall record the facts which support his findings and the alcoholic shall have the right of appeal from that order as set out in G.S. 122-58.9.

(e) If the district court judge finds the person to be an alcoholic in need of care, he may take any one or more of the following actions:

- (1) Direct the alcoholic in cooperation with any member of his family or other responsible person to make and follow plans for his treatment in an alcoholism program operated or approved by the court;
- (2) Order the alcoholic to participate for up to 30 days in a particular outpatient or inpatient alcoholism program operated or approved by the Department of Human Resources, or commit the person to the custody of the Division of Mental Health, Mental Retardation, and Substance Abuse Services for up to 30 days for assignment to an appropriate alcoholism program;
- (3) Refer the alcoholic to an alcoholism program or to a particular physician or other professional qualified to assist alcoholics;
- (4) Direct any alcoholism agency operated or approved by the Department of Human Resources to work with the alcoholic to develop and carry out a program for his treatment or care.

(f) As part of the action taken under subsection (e) the judge may direct the alcoholic or any public official concerned to make periodic reports for up to 30 days relating to the alcoholic's participation and progress in the activity to which he has been assigned. (1977, 2nd Sess., c. 1134, s. 4; 1979, c. 358, s. 27.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1134, s. 8, makes the act effective Oct. 1, 1978.

The 1979 amendment, effective July 1, 1979, substituted "Division of Mental Health, Mental

Retardation, and Substance Abuse Services" for "Division of Mental Health and Mental Retardation Services" near the end of subdivision (2) of subsection (e).

§ 122-58.23. Long-term residential care for alcoholic who has not progressed in treatment. — (a) A district court judge may order a person committed for up to 180 days to a residential facility operated or approved for that purpose by the Department of Human Resources, if the judge determines by clear and convincing evidence that:

- (1) The person is an alcoholic who is in need of care as defined by G.S. 122-58.22; and
- (2) He has been given recent opportunities to participate in alcoholism treatment programs; and
- (3) He has willfully refused to participate or cooperate in such programs, or has failed to show significant and sustained progress toward overcoming his alcoholism.

(b) The alleged alcoholic may be brought before the district court judge under G.S. 14-446 after being found not guilty by reason of alcoholism of the offense of being intoxicated and disruptive in a public place, or under G.S. 122-65.11 after being assisted while intoxicated in public. The provisions of subsections (c) and (d) of G.S. 122-58.22 shall also be applicable to proceedings under this section. Notice of the district court hearing shall be given to the alleged alcoholic and his counsel by the clerk of court at least 48 hours in advance of the scheduled appearance unless counsel waived notice for the alleged alcoholic.

(c) A person committed to a residential facility for up to 180 days under subsection (a) may be released at any time prior to the end of that period when the director of the facility determines that the person is no longer in need of the care of that facility.

(d) If at the end of the period of commitment imposed under subsection (a), the director of the residential facility is of the opinion that the alcoholic is in need of further care at the facility, he may request a hearing for an additional commitment under the procedures of G.S. 122-58.11. The proceeding shall be the same as for involuntary commitment under that section except that the issue to be determined by the district court judge is whether the person should be committed under subsection (a). (1977, 2nd Sess., c. 1134, s. 4.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1134, s. 8, makes the act effective Oct. 1, 1978.

§ 122-58.24. Representation of State's interest by Attorney General. — The Attorney General is hereby authorized to employ four attorneys, one to be assigned by him full time to each of the State's four regional psychiatric facilities to represent the State's interest at commitment hearings, rehearings, and supplemental hearings held at the hospitals under Articles 4 and 5A of Chapter 122 of the General Statutes of North Carolina, and to provide liaison and consultation services concerning these matters. Such attorney shall be subject to all the provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform additional duties as may be assigned to him by the Attorney General. (1979, c. 915, s. 12.)

Editor's Note. — Session Laws 1979, c. 915, s. 24, makes this section effective Oct. 1, 1979.

§ 122-58.25. Confidentiality of court record of minors committed involuntarily. — (a) The court records of a minor made in all proceedings pursuant to this Article 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. 122-58.26.

(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 person committed involuntarily, be expunged from the files of the court after the person committed involuntarily has reached adulthood and has been released. (1979, c. 915, s. 20.)

Editor's Note. — Session Laws 1979, c. 915, s. 24, makes this section effective Oct. 1, 1979.

§ 122-58.26. Exception to confidentiality rule; procedure. — Any person seeking information contained in the court files or the court records of the proceedings involving minors made pursuant to an action under this Article 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. (1979, c. 915, s. 20.)

Editor's Note. — Session Laws 1979, c. 915, s. 24, makes this section effective Oct. 1, 1979.

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 7A.

Chronic Alcoholics.

§§ 122-65.6 to 122-65.9: Repealed by Session Laws 1977, 2nd Sess., c. 1134, s. 6, effective October 1, 1978.

Cross Reference. — For present provisions as to public intoxication, see § 14-443 et seq., § 122-65.10 et seq.

ARTICLE 7B.

Public Intoxication.

§ 122-65.10. **Definitions.** — As used in this Article:

- (1) "Intoxicated" is the condition of a person whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol; and
- (2) "Officer" is a law-enforcement officer with the power of arrest, or an officer employed by a city or county under G.S. 122-65.12; and
- (3) A "public place" is a place which is open to the public, whether it is publicly or privately owned. (1977, 2nd Sess., c. 1134, s. 2.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1134, s. 8, makes the act effective Oct. 1, 1978.

§ 122-65.11. Assistance to person who is intoxicated in public. — (a) An officer may assist a person found intoxicated in a public place by taking any of the following actions:

- (1) The officer may direct or transport the intoxicated person home;
- (2) The officer may direct or transport the intoxicated person to the residence of another person willing to accept him;
- (3) If the intoxicated person is apparently in need of and unable to provide for himself food, clothing or shelter, but is not apparently in need of immediate medical care, the officer may direct or transport him to an appropriate public or private shelter facility approved for this purpose by the Department of Human Resources; or
- (4) If the intoxicated person is apparently in need of but unable to provide for himself immediate medical care, the officer may direct or transport him to a community mental health center, hospital, or physician's office; or the officer may direct or transport the person to any other appropriate health care facility approved for this purpose by the Department of Human Resources.

(b) In providing the assistance authorized by subsection (a), the officer may use reasonable force to restrain the intoxicated person if it appears necessary to protect himself, the intoxicated person or others. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under authority of this Article.

(c) If the officer takes the action described in either subdivision (a)(3) or (a)(4) above, the facility to which the intoxicated person is taken may detain him only until he becomes sober, or a maximum of 24 hours, unless the officer or someone at the facility has obtained an order from a clerk or magistrate under subsection (d). The person may stay a longer period if he wishes to do so and the facility is able to accommodate him.

(d) Upon finding that it is probable that a person assisted under subdivision (a)(3) or (a)(4) is an alcoholic in need of care as defined by G.S. 122-58.22 or 122-58.23, a clerk or magistrate may order that person detained until he can appear before a district court judge for a hearing to determine if he is an alcoholic in need of care. The person may be detained no more than 96 hours for this purpose. The clerk or magistrate may direct that the person be kept at the facility to which he was taken under subdivision (a)(3) or (a)(4), or at any other facility approved for this purpose by the Department of Human Resources. If the district court judge is unable to make a determination whether the person is an alcoholic in need of care at the time the alleged alcoholic is initially brought before him, he may order the person to return to court at any time within the next 15 days to complete the determination. (1977, 2nd Sess., c. 1134, s. 2.)

§ 122-65.12. Cities and counties may employ officers to assist intoxicated persons. — A city or county may employ officers to assist persons who are intoxicated in public. Officers employed for this purpose shall be trained to give assistance to those who are intoxicated in public, including the administration of first aid. An officer employed by a city or county to assist intoxicated persons shall have the powers and duties set out in G.S. 122-65.11 within the same territory in which criminal laws may be enforced by law-enforcement officers of that city or county. (1977, 2nd Sess., c. 1134, s. 2.)

§ 122-65.13. Use of jail for care for intoxicated person. — In addition to the actions authorized by G.S. 122-65.11(a), an officer may assist a person found intoxicated in a public place by directing or transporting that person to a city or county jail. That action may be taken only if the intoxicated person is apparently in need of and unable to provide for himself food, clothing or shelter, but is not apparently in need of immediate medical care, and no other facility is readily

available to receive him. The officer and employees of the jail shall be exempt from liability as provided in G.S. 122-65.11(b). The intoxicated person may be detained at the jail only until he becomes sober, or a maximum of 24 hours, and may be released at any time to a relative or other person willing to be responsible for his care. (1977, 2nd Sess., c. 1134, s. 3.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1134, s. 8, makes the act effective Oct. 1, 1978.

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.

§ 122-75: Repealed by Session Laws 1979, c. 164, s. 1, effective October 1, 1979.

§§ 122-77 to 122-80: Repealed by Session Laws 1979, c. 164, s. 1, effective October 1, 1979.

§ 122-81.2. Involuntary commitment to a private hospital. — (a) All involuntary commitments to private hospitals or private facilities licensed by the Department of Human Resources under this Article shall be accomplished in accordance with the provisions of Article 5A of this Chapter.

(b) As provided in G.S. 122-58.8(b), the district court judge may order treatment of an individual at a private hospital, home, or school for the cure, treatment, or rehabilitation of the mentally ill, mentally retarded, or inebriate persons licensed in accordance with G.S. 122-72.

(c) Whenever any interested person feels that it would be in the best interest of a committed individual that such committed individual be transferred to another mental health facility, that interested person may petition the district court for an order directing such transfer. This petition shall be filed in the district court which issued the last commitment order in the case. The district court judge may in his discretion issue a transfer order if such order is in the best interest of the committed person and the transfer conforms to the State policy of the least restrictive mode of treatment provided in G.S. 122-58.1. Provided, however, that this subsection shall not apply to transfers between two regional Mental Health Facilities. (1979, c. 164, s. 2.)

Editor's Note. — Session Laws 1979, c. 164, s. 5, makes this section effective Oct. 1, 1979.

§ 122-82.2: Repealed by Session Laws 1979, c. 164, s. 1, effective October 1, 1979.

§§ 122-83 to 122-84.1: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Cross Reference. — For present provisions as to determination of incapacity of defendant to proceed to trial, see § 15A-101 et seq. For present provisions as to civil commitment of defendants found not guilty by reason of insanity, see § 15A-1321. For present provisions as to temporary restraint of defendants found not guilty by reason of insanity, see § 15A-1322.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "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 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 122-85. **Convicts becoming mentally ill.** — (a) A convict who becomes mentally ill and 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 dangerous to himself or others, he shall order him transferred for treatment to a regional psychiatric facility designated by the Division of Mental Health, Mental Retardation, and Substance Abuse 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; 1979, c. 358, s. 27; c. 915, s. 11.)

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).

The first 1979 amendment, effective July 1, 1979, substituted "Division of Mental Health, Mental Retardation, and Substance Abuse Services" for "Division of Mental Health and Mental Retardation Services" at the end of the fifth sentence of subsection (a).

The second 1979 amendment, effective Oct. 1, 1979, deleted "imminently" preceding "dangerous" in the first and last sentences of subsection (a). 215 S.E.2d 790 (1975).

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.

§§ 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.

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.

Sec.	Sec.
122A-1. Short title.	122A-7. [Repealed.]
122A-2. Legislative findings and purposes.	122A-8. Bonds and notes.
122A-3. Definitions.	122A-8.1. Powers of the State Treasurer.
122A-4. North Carolina Housing Finance Agency.	122A-9. Trust agreement or resolution.
122A-5. General powers.	122A-10. Validity of any pledge.
122A-5.1. Rules and regulations governing Agency activity.	122A-11. Trust funds.
122A-5.2. Mortgage insurance authority.	122A-12. Remedies.
122A-5.3. Energy conservation loan authority.	122A-15. Refunding obligations.
122A-5.4. Housing for persons and families of moderate income.	122A-16. Oversight by committees of General Assembly; annual reports.
122A-6. Credit of State not pledged.	122A-17. Officers not liable.
122A-6.1. Credit of State not pledged to satisfy liabilities under energy conservation loan guarantees.	122A-18. Authorization to accept appropriated moneys.
	122A-19. Tax exemption.
	122A-20. Conflict of interest.

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

Editor’s Note. — The 1973 amendment substituted “Finance Agency” for “Corporation” in the title of the act.

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

Session Laws 1979, c. 810, s. 2, contains a severability provision applicable to the entire Chapter 122A, including G.S. 122A-5.4.

§ 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 provide, 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 Session Laws 1973, c. 1296, s. 65, contains a rewrote subsection (c). severability clause.

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

The aggregate principal amount of all mortgages so insured by the Agency under this Chapter and outstanding at any one time shall not exceed 10 times the average annual balance for the preceding calendar year of funds on deposit in the housing mortgage insurance fund, the creation of which is hereby authorized. The aggregate amount of principal obligations of all mortgages so insured shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from moneys on deposit to the credit of the housing mortgage insurance fund. Any

contract of insurance executed by the Agency under this section shall be conclusive evidence of eligibility for such mortgage insurance and the validity of any contract of insurance so executed or of an advance commitment to issue such shall be incontestable in the hands of a mortgagee from the date of execution of such contract or commitment, except for fraud or misrepresentation on the part of such mortgagee and, as to commitments to insure, noncompliance with the terms of the advance commitment or Agency regulations in force at the time of issuance of the advance commitment.

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

- (1) Be one which is made and held by a mortgagee approved by the Agency as responsible and able to service the mortgage properly;
- (2) Not exceed (i) ninety percent (90%) of the estimated cost of the proposed housing if owned or to be owned by a profit-making sponsor or (ii) one hundred percent (100%) of the estimated cost of such proposed housing if owned or to be owned by a nonprofit housing sponsor or, if owned by a person or family of lower income, in the case of a single family dwelling or condominium;
- (3) Have a maturity satisfactory to the Agency but in no case longer than eighty percent (80%) of the Corporation's estimate of the remaining useful life of said housing or 40 years from the date of the issuance of insurance, whichever is earlier;
- (4) Contain amortization provisions satisfactory to the Agency requiring periodic payments by the mortgagor not in excess of his ability to pay as determined by the Agency;
- (5) Be in such form and contain such terms and provisions with respect to maturity, property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, equitable and legal redemption rights, prepayment privileges and other matters as the Agency may prescribe.

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

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

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

terms of financing when such appear prudent. The mortgagee shall be entitled to receive the benefits of the insurance provided herein upon:

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

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

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

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

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

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

§ 122A-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-5.4. Housing for persons and families of moderate income. —

(a) The General Assembly hereby finds and determines that there is a serious shortage of decent, safe and sanitary housing which persons and families of moderate income in the State can afford; that it is in the best interests of the State to encourage home ownership by persons and families of moderate income; that the assistance provided by this section will enable persons and families of moderate income to acquire existing decent, safe and sanitary housing without undue financial hardship and will encourage private enterprise to sponsor, build and rehabilitate additional housing for such persons and families; and that the Agency in providing such assistance is promoting the health, welfare and prosperity of all citizens of the State and is serving a public purpose for the benefit of the general public.

(b) The terms "persons and families of lower income" and "persons of lower income" wherever they appear in this Chapter, except where they appear in G.S. 122A-2 and 122A-3(11), shall be deemed to include "persons and families of moderate income" as defined in clause (c) of this section.

(c) "Persons and families of moderate income" means persons and families deemed by the Agency to require the assistance 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 and (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a moderate or low and moderate income basis. (1979, c. 810.)

Editor's Note. — Session Laws 1979, c. 810, s. 2, contains a severability provision.

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

The 1977 amendment, effective Sept. 1, 1977, added the second sentence of the second paragraph.

§ 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. added this section and § 122A-5.3 and amended §§ 122A-2, 122A-3 and 122A-6, made an

Section 6 of Session Laws 1977, c. 1083, which appropriation for the purpose of guaranteeing

energy conservation loans in accordance with the provisions of the act. Section 6 further 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 seven hundred fifty million dollars (\$750,000,000) 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; 1979, c. 844.)

Editor's Note. — The 1973 amendment substituted "Agency" for "Corporation" throughout the section.

The 1979 amendment substituted "seven hundred fifty million dollars (\$750,000,000)" for

"two hundred million dollars (\$200,000,000)" near the middle of the first sentence in the first paragraph.

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 depository 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 Session Laws 1973, c. 1296, s. 65, contains a substituted "Agency" for "Corporation" severability clause. throughout the section.

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

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

Chapter 123.

Impeachment.

Article 1.

The Court.

Sec.

123-5. Causes for impeachment.

ARTICLE 1.

The Court.

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

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

Chapter 123A.

Industrial Development.

§ 123A-1. Short title.

Editor's Note. — For survey of 1973 case law on the constitutionality of this Chapter, see 52 N.C.L. Rev. 859 (1974).

Chapter 125.

Libraries.

Article 1.

Sec.

State Library Agency.

125-7. State policy as to public library service; annual appropriation therefor; administration of funds.

Sec.

125-2. Powers and duties of Department of Cultural Resources.

ARTICLE 1.

State Library Agency.

§ 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.) 26 June 1987

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.

§ 125-7. State policy as to public library service; annual appropriation therefor; administration of funds.

(c) The fund herein provided shall be administered by the Department of Cultural Resources, which shall frame bylaws, rules and regulations for the allocation and administration of such funds. The funds shall be used to improve, stimulate, increase and equalize public library service to the people of the whole State, shall be used for no other purpose, except as herein provided, and shall be allocated among the legally established municipal, county or regional libraries in the State taking into consideration local needs, area and population to be served, local interest and such other factors as may affect the State program of public library service.

(1979, c. 578.)

Editor's Note. —

The 1979 amendment substituted "legally established municipal, county or regional libraries" for "counties" near the middle of the second sentence of subsection (c).

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

Chapter 126.

State Personnel System.

Article 1.

State Personnel System Established.

Sec.

- 126-2. State Personnel Commission.
- 126-3. Office of State Personnel established; administration and supervision; appointment, compensation and tenure of Director.
- 126-4. Powers and duties of State Personnel Commission.
- 126-5. Employees subject to Chapter; exemptions.
- 126-6.1. Vocational teachers in schools operated by Department of Human Resources.

Article 2.

Salaries and Leave of State Employees.

- 126-7. Automatic and merit salary increases for State employees.
- 126-8. Minimum leave granted State employees.
- 126-8.1. Paid leave for certain athletic competition.

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.
- 126-10. Personnel services to local governmental units.
- 126-11. Local personnel system may be established.

Article 6.

Equal Employment Opportunity Assisting in Obtaining State Employment.

- 126-16. Equal employment opportunity by State departments and agencies and local political subdivisions.
- 126-17. Retaliation by State departments and agencies and local political subdivisions.
- 126-18. Compensation for assisting person in obtaining State employment barred; exception.
- 126-19 to 126-21. [Reserved.]

Article 7.

The Privacy of State Employee Personnel Records.

Sec.

- 126-22. Personnel files not subject to inspection under § 132-6.
- 126-23. Certain records to be kept by State agencies open to inspection.
- 126-24. Confidential information in personnel files; access to such information.
- 126-25. Remedies of employee objecting to material in file.
- 126-26. Rules and regulations.
- 126-27. Penalty for permitting access to confidential file by unauthorized person.
- 126-28. Penalty for examining, copying, etc., confidential file without authority.
- 126-29. Access to material in file for agency hearing.
- 126-30 to 126-33. [Reserved.]

Article 8.

Employee Appeals of Grievances and Disciplinary Action.

- 126-34. Grievance appeal for State employees.
- 126-35. Written statement of reason for disciplinary action.
- 126-36. Appeal of unlawful State employment practice.
- 126-36.1. Appeal to Personnel Commission by applicant for employment.
- 126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision.
- 126-38. Time limit for appeals.
- 126-39. State employee defined.
- 126-40 to 126-42. [Reserved.]

Article 9.

The Administrative Procedure Act and Modifications.

- 126-43. The Administrative Procedure Act.
- 126-44. Witness fees.
- 126-45. [Repealed.]
- 126-46 to 126-50. [Reserved.]

Article 10.

Interchange of Governmental Employees.

- 126-51. Short title.
- 126-52. Definitions.

Sec.

126-53. Authority to interchange employees.

126-54. Status of employees of sending agency.

126-55. Travel expenses of employees from this State.

126-56. Status of employees of other governments.

126-57. Travel expenses of employees of other governments.

126-58. Administration.

126-59 to 126-63. [Reserved.]

Article 11.

Committee for Review of Applications for Incentive Pay for State Employees.

Sec.

126-64. Committee established.

126-65. Application for incentive awards.

126-66. Qualifications.

126-67. Awards.

126-68. Annual report.

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 will 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.

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For a survey of 1977 law on employment regulation, see 56 N.C.L. Rev. 854 (1978).

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).

In determining whether attorney's fees are allowable in a proceeding brought by an employee, a former employee or an application for employment, the State Personnel Commission should apply statutory changes in circumstances in which attorney's fees may be awarded according to the date the cause of action arose. Opinion of Attorney General to Mr.

Harold H. Webb, Director, Office of State Personnel, 47 N.C.A.G. 39 (1977).

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).

Cited in *Williams v. Greene*, 36 N.C. App. 80, 243 S.E.2d 156 (1978).

§ 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."

For a survey of 1977 law on employment regulation, see 56 N.C.L. Rev. 854 (1978).

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).

Secretaries Automatically Exempt under Subdivision (d)(3) and Designated Exempt under Subdivision (d)(4). — Confidential

secretaries named in subdivision (d)(3) of this section are automatically exempt while confidential secretaries to other persons designated as exempt because they are in policy-making positions must also be redesignated exempt pursuant to subdivision

(d)(4) of this section in order to be exempt. Opinion of Attorney General to Mr. Harold H. Webb, Director, Office of State Personnel, 47 N.C.A.G. 61 (1977).

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. Performance 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 salary is at or below the third step of the salary range established for the class to which the position is assigned 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 if the individual's performance merits the increase. 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; 1977, 2nd Sess., c. 1213.)

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.

The 1977, 2nd Sess., amendment rewrote the second 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.

126-8.1. Paid leave for certain athletic competition. — (a) As used in this section, the term "United States team" includes any group leader, coach, official, trainer, or athlete who is a member of an official United States delegation in Pan American, Olympic or international athletic competition.

(b) Any State employee or public school employee paid by State funds who has been chosen to be a member of a United States team for Pan American, Olympic or international competition shall be granted paid leave, in addition to annual and sick leave that person is otherwise entitled to, for the sole purpose of training for and competing in that competition. The paid leave shall be for the period of the official training camp and competition or 30 days a year, whichever is less.

(c) The Department of Administration may adopt such rules and regulations as are reasonable and necessary to carry out the provisions of this section, with the approval of the Governor and the Advisory Budget Commission. (1979, c. 708.)

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 be limited to individuals who are at least 40 years of age but less than 70 years of age. (1971, c. 823; 1975, c. 158; 1977, c. 866, s. 7; 1979, c. 862, s. 3.)

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.

The 1979 amendment, effective Jan. 1, 1979, substituted "be limited to individuals who are at least 40 years of age but less than 70 years of age" for "apply only to those persons above the age of 40 years and under the age of 65 years" at the end of the second sentence.

Session Laws 1979, c. 862, s. 9, effective Jan. 1, 1979, provides: "The amendment made by Section 3 of this act, as it may affect seniority systems or employee benefit plans which require or permit the involuntary retirement of any individual because of the age of such individual, shall not apply to employees covered by a collective bargaining agreement, which was in effect on September 1, 1977, and which was entered into by a labor organization (as defined by Section 6(d)(4) of the Fair Labor Standards Act of 1938) until the termination of such agreement or on January 1, 1980, whichever occurs first."

§ 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, "Commission" for "Board" in the second sentence, effective Feb. 1, 1976, substituted

§ 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.

Notwithstanding any other provision of this Chapter, any department head may, in his discretion, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to his department or whose personnel file is maintained in his department and the reasons therefor and may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when such department head shall determine that the release of such information or the inspection and examination of such file or portion thereof is essential to maintaining the integrity of such department or to maintaining the level or quality of services provided by such department; provided that prior to releasing such information or making such file or portion thereof available as provided herein, such department head shall prepare a memorandum setting forth the circumstances which the department head deems to require such disclosure and the information to be disclosed. The memorandum shall be retained in the files of said department head and shall be a public record. (1975, c. 257, s. 1; 1977, c. 866, s. 10; 1977, 2nd Sess., c. 1207.)

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).

The 1977, 2nd Sess., amendment, effective July 1, 1978, added the last paragraph of the section.

§ 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.)

Editor's Note. — For a survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).
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).
Where a state employee asserts civil rights violations under 42 U.S.C. § 1983 for his

wrongful dismissal, the superior court retains its traditional power to grant preliminary injunctive relief without requiring him to exhaust the administrative remedies provided in Chapter 126 of the General Statutes. Williams v. Greene, 36 N.C. App. 80, 243 S.E.2d 156 (1978).
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.

Cited in *Williams v. Greene*, 36 N.C. App. 80, 243 S.E.2d 156 (1978).

§§ 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, cert denied, 291 N.C. 450, 230 S.E.2d 767 (1976).

Where a state employee asserts civil rights violations under 42 U.S.C. § 1983 for his wrongful dismissal, the superior court retains its traditional power to grant preliminary injunctive relief without requiring him to exhaust the administrative remedies provided in Chapter 126 of the General Statutes. *Williams v. Greene*, 36 N.C. App. 80, 243 S.E.2d 156 (1978).

§ 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.)

§§ 126-59 to 126-63: Reserved for future codification purposes.

ARTICLE 11.

Committee for Review of Applications for Incentive Pay for State Employees.

§ 126-64. Committee established. — There is hereby created the committee for Review of Applications for Incentive Pay for State Employees, hereinafter referred to as "the Committee." The committee shall consist of the Secretary of Administration, who shall act as chairman, the State Auditor, the State Budget Officer, and the State Personnel Director. The Governor, Lieutenant Governor and Speaker of the House of Representatives shall each also appoint one person who has experience in administering incentive as used in industry. (1979, c. 945, s. 2.)

Editor's Note. — Session Laws 1979, c. 945, s. 3, provides: "This act shall become effective July 1, 1979, and will expire July 1, 1984. This act does

not affect any existing policy during the existing term of the policy."

§ 126-65. Application for incentive awards. — With the exception of units within the General Assembly, the Governor's office, the Lieutenant Governor's office, and the Department of the State Auditor, any unit of State government (i) having an identifiable self-contained budget, or (ii) having its financial records maintained according to an accounting system which identifies to the satisfaction of the State Auditor the expenditures and receipts properly attributable to that unit, may make application to the committee for selection as a candidate for the award of incentive pay to its employees. Such application must be submitted prior to the beginning of any fiscal year and must have the approval of the head of the State department within which the unit is located.

Applications shall be in the format specified by the committee and shall contain such information as it may require, including but not limited to those evaluation components developed by the applying unit which will provide quantitative measures of program output and performance.

The committee shall evaluate the applications submitted; and from those proposals which are considered to be reasonable and practical, and which are found to include developed performance indicators which lend themselves to a judgment of success or failure, the committee shall select the units to participate in the incentive pay program for the fiscal year. (1979, c. 945, s. 2.)

§ 126-66. Qualifications. — (a) To qualify for the award of incentive pay to its employees, a unit selected must demonstrate to the satisfaction of the committee that it has operated during the fiscal year:

- (1) At less cost than the immediately preceding fiscal year, and either with an increase in the level of services rendered or with no decrease in the level of services rendered; or

- (2) At no greater cost than the immediately preceding fiscal year and with an increase in the level of services rendered.
- (b) The committee shall satisfy itself that the claimed cost of operation is real and not merely apparent, and that it is not, in whole or in part, the result of:
- (1) Chance;
 - (2) A lowering of the quality of the service rendered;
 - (3) Reduced pass-through or transfer expenditures;
 - (4) Receipts realized in excess of amounts budgeted;
 - (5) Nonrecurrence of expenditures which were single outlay, or one-time expenditures, in the preceding fiscal year;
 - (6) Failure to reward deserving employees through promotions, reclassification, award of merit salary increments, or salary increases authorized by salary range revisions;
 - (7) Postponement of normal purchases and/or repairs to a future fiscal year;
 - (8) Stockpiling inventories in the immediately preceding fiscal year so as to reduce requirements in the eligible fiscal year;
 - (9) Substitution of federal funds, other receipts, or non-State funds for State appropriations;
 - (10) Unreasonable postponement of payments of accounts payable until the fiscal year immediately following the eligible fiscal year;
 - (11) Shifting of expenses to another unit of government;
 - (12) Any other practice, event, or device which the committee decides has caused a distortion which makes it falsely appear that a savings or increase in level of services has occurred.
- (c) Conversely, the committee shall consider as legitimate savings those reductions in expenditures made possible by such items as the following:
- (1) Reductions in overtime;
 - (2) Elimination of consultant fees;
 - (3) Less temporary help;
 - (4) Elimination of budgeted positions;
 - (5) Improved methods of communication;
 - (6) Improved systems and procedures;
 - (7) Better deployment and utilization of manpower;
 - (8) Elimination of unnecessary travel;
 - (9) Elimination of unnecessary printing and mailing;
 - (10) Elimination of unnecessary payments for advertising, memberships, dues, subscriptions, etc.;
 - (11) Elimination of waste, duplication, and operations of doubtful value;
 - (12) Improved space utilization;
 - (13) Any other items considered by the committee as representing true savings. (1979, c. 945, s. 2.)

§ 126-67. Awards. — At the conclusion of the eligible fiscal year, the committee shall compare the expenditures for that year of each unit selected against the expenditures of that unit for the immediately preceding fiscal year and, after making such adjustments as in its judgment are required to eliminate distortions, shall determine the amount, if any, that the unit has reduced its cost of operations or increased its level of services in the eligible fiscal year. Adjustments to eliminate distortions may include any legislative increases in employee compensation and inflationary increases in the cost of services, materials and supplies. If the committee shall also determine that in its judgment a unit qualifies for award, it shall award and is hereby authorized to award, with the approval of the Advisory Budget Committee, to the employees of that unit a sum not in excess of twenty-five percent (25%) of the amount determined to be the savings to the State for the level of services rendered. The amount

awarded shall be divided and distributed in equal shares to the employees of the unit, except that employees who worked for that unit less than the full 12 months of the fiscal year shall receive only a pro rata share based on the fraction of the year worked for that unit. Funds for this incentive pay shall be drawn from the unit's principal department's ending balance for the eligible fiscal year. (1979, c. 945, s. 2.)

§ 126-68. Annual report. — The Secretary of Administration shall cause to be prepared and submitted to the General Assembly a comprehensive annual status report on the committee's activities, decisions, awards, and recommendations with respect to the employee incentive pay program. (1979, c. 945, s. 2.)

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.

Sec.

- 127A-1. Composition of militia.
- 127A-2. Classification of militia.
- 127A-3. Organized militia; national guard.
- 127A-4. Organized militia; naval militia.
- 127A-5. Organized militia; State defense militia.
- 127A-6. Organized militia; historic military commands.
- 127A-7. Composition of unorganized militia.
- 127A-8. Exemptions from duty with the militia.
- 127A-9. Number of troops authorized.
- 127A-10. Corps entitled to retain privileges.
- 127A-11 to 127A-15. [Reserved.]

Article 2.

General Administrative Officers.

- 127A-16. Governor as commander in chief.
- 127A-17. Commander in chief to prescribe regulations.
- 127A-17.1. Confidentiality of national guard records.
- 127A-18. Personal staff of Governor.
- 127A-19. Adjutant General.
- 127A-20. Administrative and operational relationships of the Adjutant General.
- 127A-21. United States property and fiscal officer.
- 127A-22. North Carolina property and fiscal officer.
- 127A-23. Commissions for commandants and officers at qualified educational institutions.
- 127A-24 to 127A-28. [Reserved.]

Article 3.

National Guard.

- 127A-29. National guard.
- 127A-30. Organization of national guard units.
- 127A-31. Location of units.
- 127A-32. Officers appointed and commissioned; oath of office.
- 127A-33. Promotion of officers by seniority and in accordance with regulations.
- 127A-34. Relative rank among officers of same grade.
- 127A-35. Elimination and disposition of officers; efficiency board; transfer to inactive status.
- 127A-36. Retirement of officers.

Sec.

- 127A-37. Enlistments in national guard; oath of enlistment.
- 127A-38. Discharge of enlisted personnel.
- 127A-39. Membership continued in the national guard.
- 127A-40. Pensions for the members of the North Carolina national guard.
- 127A-41. Uniforms, arms and equipment.
- 127A-42. Distinguished Service Medal by Governor of North Carolina.
- 127A-43. North Carolina National Guard Meritorious Service Medal.
- 127A-44. North Carolina National Guard Commendation Medal.
- 127A-45. North Carolina National Guard State Active Duty Award.
- 127A-45.1. North Carolina National Guard Governor's Unit Citation.
- 127A-45.2. North Carolina National Guard Meritorious Unit Citation.
- 127A-45.3. North Carolina National Guard Distinguished Civilian Service Medal.
- 127A-45.4. North Carolina National Guard Outstanding Civilian Service Medal.
- 127A-45.5. North Carolina National Guard Meritorious Civilian Service Award.
- 127A-46. Authority to wear medals, ribbons and other awards.
- 127A-47. Courts-martial for national guard.
- 127A-48. General courts-martial.
- 127A-49. Special courts-martial; appointments, power and authority.
- 127A-50. Summary courts-martial.
- 127A-51. Nonjudicial punishment.
- 127A-52. Jurisdiction of courts-martial.
- 127A-53. Manual for Courts-Martial.
- 127A-54. Sentences; where executed.
- 127A-55. Forms for courts-martial procedure.
- 127A-56. Powers of courts-martial.
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- 127A-60. Sentence of dismissal.
- 127A-61. Disposition of fines.
- 127A-62 to 127A-66. [Reserved.]

Article 4.

Naval Militia.

- 127A-67. Organization and equipment.
- 127A-68. Officers appointed to naval militia.
- 127A-69. Officers assigned to duty.
- 127A-70. Discipline in naval militia.

- Sec.
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 127A-74. Courts-martial for naval militia.
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Article 5.

State Defense Militia.

- 127A-80. Authority to organize and maintain State defense militia of North Carolina.
 127A-81. State defense militia cadre.
 127A-82 to 127A-86. [Reserved.]

Article 6.

Unorganized Militia.

- 127A-87. Unorganized militia ordered out for service.
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Article 7.

Regulations as to Active Service.

- 127A-97. National guard and naval militia first ordered out.
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Article 8.

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- 127A-105. Rations and pay on State service.
 127A-106. Paid by the State.
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 127A-110. Proceedings against third party injuring or killing guard personnel.
 127A-111 to 127A-115. [Reserved.]

Article 9.

Privilege of Organized Militia.

- 127A-116. Leaves of absence for State officers and employees.
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 127A-119. When families of soldiers, airmen and sailors supported by county.
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Article 10.

Care of Military Property.

- Sec.
 127A-125. Custody of military property.
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 127A-132 to 127A-136. [Reserved.]

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- 127A-137. Requisition for federal funds.
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Article 12.

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- 127A-145. Reports of officers.
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 127A-156 to 127A-160. [Reserved.]

Article 13.

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- 127A-161. Definitions.
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- 127A-168. Local financial support.
 127A-169. Unexpended portion of State appropriation.
 127A-170 to 127A-174. [Reserved.]

Article 14.**National Guard Mutual Assistance Compact.**

- 127A-175. Purposes.
 127A-176. Entry into force and withdrawal.
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 127A-178. Delegation.
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 127A-180. Construction and severability.
 127A-181. Payment of liability to responding state.
 127A-182. Status, rights and benefits of forces engaged pursuant to Compact.
 127A-183. Injury or death while going to or returning from duty.
 127A-184. Authority of responding state required to relieve from assignment or reassign officers.

Cross Reference. — As to transfer to the North Carolina National Guard to the Department of Crime Control and Public Safety, see § 143B-475.

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

Sec.

- 127A-185 to 127A-189. [Reserved.]

Article 15.**North Carolina National Guard Tuition Assistance Act of 1975.**

- 127A-190. Short title.
 127A-191. Purpose.
 127A-192. Definitions.
 127A-193. Benefit.
 127A-194. Eligibility.
 127A-195. Administration and funding.

Article 16.**National Guard Re-employment Rights.**

- 127A-201. Entitlement.
 127A-202. Rights.
 127A-203. Penalties for denial.

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 the approval of the Governor and in consultation with the Secretary, Department of Crime Control and Public Safety, the Adjutant General may appoint a deputy adjutant general for army national guard 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; 1979, c. 481.)

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.

The 1979 amendment inserted "the" before "approval" near the beginning of the first

sentence of the second paragraph and "Department" near the beginning of that sentence and "for army national guard" near the middle of that sentence.

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, Session Laws 1977, c. 70, s. 34, contains a severability clause.
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).

§ 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, Session Laws 1977, c. 70, s. 34, contains a severability clause.
effective April 1, 1977, substituted "Crime Control and Public Safety" for "Military and Veterans Affairs" throughout the section.

§ 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 Secretary of Crime Control and Public Safety shall determine the eligibility of Guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. The Department of State Treasurer shall make such payments to those persons certified from funds appropriated to the Department of State Treasurer from the General Fund.

(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; 1979, c. 870.)

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).

The 1979 amendment, effective July 1, 1979, substituted the present subsection (f) for one

which read: "The provisions of this section shall be administered by the Secretary of Crime Control and Public Safety."

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; unit funds.** — (a) 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.

(b) Any funds donated to any unit or units of the militia by local governments, civic organizations or private sources, short-term rental of their armory buildings, or funds earned through vending machine commissions and items of similar nature shall remain at the unit or units to be expended in accordance with rules and regulations prescribed by the Secretary. (1947, c. 1010, s. 8; 1975, c. 604, s. 2; 1979, c. 701, s. 1.)

Editor's Note. — The 1979 amendment designated the former section as subsection (a), and added subsection (b).

§ 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) Repealed by Session Laws 1979, c. 701, s. 2.

(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; 1979, c. 701, 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.

ARTICLE 16.

National Guard Re-employment Rights.

§ 127A-201. Entitlement. — Any member of the North Carolina National Guard who, at the direction of the Governor, enters State duty, is entitled, upon honorable release from State duty, to all the re-employment rights provided for in this Article. (1979, c. 155, s. 1.)

§ 127A-202. Rights. — Upon release from State duty, the employee shall make written application to his previous employer for re-employment within five days of his release from duty or from hospitalization continuing after release. If the employee is still qualified for his previous employment, he shall be restored to his previous position or to a position of like seniority, status and salary, unless the employer's circumstances now make the restoration unreasonable. If the employee is no longer qualified for his previous employment, he shall be placed in another position, for which he is qualified, and which will give him appropriate seniority, status and salary, unless the employer's circumstances now make the placement unreasonable. (1979, c. 155, s. 1.)

§ 127A-203. Penalties for denial. — If any employer, public or private, fails or refuses to comply with G.S. 127A-202, the Superior Court for the district of the employer's place of business may, upon the filing of a motion, petition, or other appropriate pleading by the employee, require the employer to comply with G.S. 127A-202 and to compensate the employee for any loss of wages or benefits suffered by reason of the employer's unlawful failure or refusal. (1979, c. 155, s. 1.)

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

Sec.

128-1.1. Dual-office holding allowed.

128-9. [Repealed.]

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

Article 3.

Retirement System for Counties,
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128-21. Definitions.

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128-36.1. [Repealed.]

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.

§ 128-6. Persons admitted to office deemed to hold lawfully.

To constitute an officer de facto. —

A judge de facto is defined as one who occupies a judicial office under some color of right, and for the time being performs its duties with public acquiescence, though having no right in fact. In order for one to be deemed a judge de facto, he must have satisfied the following four conditions: (1) He assumes to be the judge of a court which is established by law; (2) he is in possession of the judicial office in question, and is discharging its duties; (3) his incumbency of the judicial office is illegal in some respects; and (4) he has at least a fair color of right or title to the judicial office, or has acted as its occupant for so long a time and under such circumstances of reputation or acquiescence by the public generally as are calculated to afford a presumption of his right to act and to induce people, without inquiry, to submit to or invoke official action on his part on the supposition that he is the judge he assumes to be. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

The General Assembly has conferred express approval on the judicial doctrine of de facto

office by enacting this section. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

Acts of de facto officers. —

The acts of a de facto officer are valid as to the public and third persons. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

Usurping, De Facto and De Jure Officers Distinguished. —

A usurper in office is distinguished from a de facto officer in that a usurper takes possession of office and undertakes to act officially without any authority, either actual or apparent. Since he is not an officer at all or for any purpose, his acts are absolutely void, and they can be impeached at any time in any proceeding. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

A Judge De Jure. — A judge de jure exercises the office of judge as a matter of right. In order to become a judge de jure one must satisfy three requirements: (1) He must possess the legal qualifications for the judicial office in question; (2) he must be lawfully chosen to such office; and (3) he must have qualified himself to perform the

duties of such office according to the mode prescribed by law. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

So far as the public and third persons are concerned, a judge de facto is competent to do whatever may be done by a judge de jure. In consequence, acts done by a judge de facto in the discharge of the duties of his judicial office are as effectual so far as the rights of third persons or the public are concerned as if he were a judge de jure. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

Disposition of Votes Cast for Ineligible Candidate. — The votes cast for an ineligible candidate, though not effective to entitle him to the office, are nonetheless not void; they are to

be given effect in determining the result of the election as regards the other candidates. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

A candidate who receives fewer votes than are received by some other candidate cannot be said, under any circumstances, to be elected. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

The ineligibility of the majority candidate does not elect the minority candidate. And this without reference to the question whether the voters knew of the ineligibility of the candidate for whom they voted. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

§ 128-7. Officer to hold until successor qualified.

Vacancy Created by Resignation. — Where a district court judge resigned upon the discovery of his legal infirmity under § 7A-4.20(a), his resignation from office created an actual vacancy in that position. Hence, upon the resignation, there was no one legally entitled to hold office by virtue of an election, nor under

this section was there an incumbent with the legal right to continue in office until a successor was elected or appointed. The judge, therefore, created a legal as well as an actual vacancy in office under N.C. Const., Art. IV, § 19. *People ex rel. Duncan v. Beach*, 294 N.C. 713, 242 S.E.2d 796 (1978).

§ 128-9: Repealed by Sessions Laws 1979, c. 650.

§ 128-10. Citizen to recover funds of county or town retained by delinquent official.

Editor's Note. — For a comment on taxpayers' actions, see 13 Wake Forest L. Rev. 397 (1977).

§ 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 (11) 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. By virtue of Session Laws 1979, c. 118, Wilmington should be stricken from the bound 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, their earlier service to any other employer as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State.

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.

(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 no benefit is allowable in another public retirement system as the result of the service. Payment shall be permitted only on a total lump sum 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.

(k) All repayments and purchases of service credits, allowed under the provisions of this section, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purchases of the actuarial valuation of the system's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the board of trustees upon the advice of the consulting actuary. (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; 1979, c. 866, s. 1; c. 868, ss. 1, 2; c. 1059, s. 1.)

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).

The first 1979 amendment, effective July 1, 1979, deleted "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" after "allowed" near the beginning of the third sentence in subsection (j), and substituted "the" for "such" before "service" near the end of that sentence.

The second 1979 amendment, effective July 1, 1979, deleted at the end of subsection (i) a bracketed paragraph which read: "[All repayments must be made within three years after the member first becomes eligible to make such repayment.]" The amendment also added subsection (k).

The third 1979 amendment, effective July 1, 1979, substituted "their" for "or on account of" near the middle of the second paragraph of subsection (a) and added "or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State" at the end of that paragraph.

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

§ 128-27. Benefits. — (a) Service Retirement Benefits. —

- (1) Any member in service may retire upon written application to the Board of Trustees setting forth at which time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have completed 30 years of service or shall have attained the age of 60 years, or if a uniformed policeman or fireman he shall have attained the age of 55 years, and notwithstanding that, during such period of notification, he may have separated from service.
- (2) A member in service who attains age 70 shall make timely application for retirement, in accordance with (1) above, to be effective no later than the first of July coincident with or next following his 70th birthday: Provided that, upon the approval of his employer, any member may be continued in service on a year-to-year basis.
- (3) Repealed by Session Laws 1971, c. 325, s. 12.
- (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 ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) 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 ($\frac{1}{4}$ 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, but prior to July 1, 1978. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1976, but prior to July 1, 1978, 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 ($1\frac{1}{2}\%$) 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 ($\frac{1}{4}$ 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).

(b6) Service Retirement Allowances of Members Retiring on or after July 1, 1978. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1978, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his 65th birthday, 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 60th and before his 65th 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 ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

(2b) If the member's service retirement date occurs before his 60th birthday and prior to his completion of 30 or more years of creditable service, his 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.

(l) Death Benefit Plan. — There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement 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 under the System 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 under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of this Plan, 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 under the System, provided said disability retirement allowance had not been discontinued or revoked during said one-year period.

The death benefit provided in this subsection 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 June 30, 1969 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; or
- (7) After December 31, 1978 and after he has attained age 70.

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, but before January 1, 1979, after attaining age 65, if he or she had not yet attained 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 Plan 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 trust fund qualified under section 501(c)(9) of the Internal Revenue Code of 1954, as amended, 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 trust 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 trust 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. 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.
- (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. 128-26(g).
- (4) A member on leave of absence from his position as a local governmental 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, if applicable. 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 local governmental employee during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars (\$20,000).

The provisions of the Retirement System pertaining to administration, G.S. 128-28, and management of funds, G.S. 128-29, are hereby made applicable to the Plan.

(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.

(u) Notwithstanding the foregoing provisions, the increase in allowance 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. 128-27(k), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the year beginning July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(v) Increases in Allowances Paid Beneficiaries Retired prior to July 1, 1976. — From and after July 1, 1978, the monthly allowances paid to or on account of beneficiaries who commenced receiving such allowances prior to July 1, 1976, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly allowances, as of July 1, 1978, have been increased to the extent provided for in the preceding subsections (k) and (u). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 128-27(k), shall be five percent (5%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. (1939,

c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128; 1977, 2nd Sess., c. 1240; 1979, c. 862, ss. 2, 6, 7; c. 974, s. 1; c. 1063, s. 2.)

Editor's Note. —

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

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

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).

The 1977, 2nd Sess., amendment, effective July 1, 1978, added "but prior to July 1, 1978" in the catchline and introductory paragraph of subsection (b5) and added subsection (b6). In subsection (l) the amendment added "or" at the end of subdivision (2) and rewrote subdivision (3); in the third sentence of the first paragraph, increased the maximum benefit in that sentence from \$15,000 to \$20,000; added the language beginning "or if his last day" at the end of the fifth sentence of the first paragraph; added the third paragraph; and increased the maximum benefit in subdivision (4) of the last paragraph from \$15,000 to \$20,000. The amendment also added subsections (u) and (v).

The first 1979 amendment, effective Jan. 1, 1979, substituted "70" for "65" near the beginning of subdivision (2) of subsection (a) and

substituted "70th" for "sixty-fifth" near the middle of that subdivision. The first 1979 amendment also inserted "but before January 1, 1979," near the beginning of the third paragraph of subsection (l) and added subdivision (7) to the former fourth paragraph (the second paragraph in the subsection as rewritten by the second 1979 amendment).

The second 1979 amendment, effective July 1, 1979, rewrote subsection (l). The second 1979 amendment incorporated in subsection (l) as rewritten the changes made by the first.

The third 1979 amendment, effective July 1, 1979, added subsection (w).

Session Laws 1979, c. 1063, s. 1, effective July 1, 1979, provides: "It shall be the policy and intent of the General Assembly to provide for an additional increase, beyond any increase payable by virtue of G.S. 128-27 (k), to retirees and beneficiaries in the Local Governmental Employees' Retirement System, comparable to any across-the-board increase provided for retirees and beneficiaries in the Teachers' and State Employees' Retirement System."

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).

§ 128-29. Management of funds. — (a) Vested in Board of Trustees. — The board of trustees shall be the trustee of the several funds created by this Article as provided in G.S. 128-30.

(c) Custodian of Funds. — The State Treasurer shall be the custodian of the several funds and shall invest their assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the Board of Trustees. The secretary of the Board of Trustees shall furnish said Board a surety bond in a company authorized to do business in North Carolina in such amount as shall be required by the Board, the premium to be paid from the expense fund.

(1979, c. 467, ss. 12, 13.)

Editor's Note. —

The 1979 amendment rewrote subsection (a),

which formerly gave the Board of Trustees the power to invest and reinvest funds in certain

listed obligations and securities, and added "and shall invest their assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3" at the end of the first sentence of subsection (c).

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

§ 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.

§ 128-34. Transfer of members.

Cross Reference. — As to transfer of membership from the Local Governmental Employees' Retirement System to the Law

Enforcement Officers' Benefit and Retirement Fund, see § 143-166.01.

§ 128-36.1: Repealed by Session Laws 1977, c. 318.

Chapter 129.

Public Buildings and Grounds.

Article 6.

North Carolina Capital
Planning Commission.

Sec.

129-31 to 129-39. [Repealed.]

Article 7.

North Carolina Capital
Building Authority.129-40. Creation of North Carolina Capital
Building Authority.

Sec.

129-42.1. Agencies and institutions.

129-42.2. Selection of architects or engineers.

129-44. Employees.

Article 8.

State Construction Finance
Authority.

129-50 to 129-70. [Repealed.]

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; Secretary of the Department of Cultural Resources; 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; 1979, c. 3, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of the Department of Administration" in two places.

The 1979 amendment inserted "Secretary of the Department of Cultural Resources" near the middle of the first sentence.

§ 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 all institutions and agencies of the State of North Carolina except constituent institutions of the University of North Carolina as defined in Chapter 116 of the General Statutes of North Carolina, community colleges, industrial education centers, and technical institutes, as defined in G.S. 115A-2, and public schools, as defined in G.S. 115-6, that are under the supervision of county or city administrative units as provided in General Statutes Chapter 115. (1969, c. 112, s. 2; 1977, c. 750; 1979, c. 161, s. 1.)

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.

The 1979 amendment substituted the language beginning "all institutions and agencies," near the beginning of this section, for a specific list of institutions and agencies.

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.

- Sec.
130-3. Definitions, as used in this Chapter.

Article 2.

Administration of Public Health Law.

- 130-9. Powers and duties of the Department of Human Resources and Commission for Health Services.
130-9.1. Residencies in public health.
130-9.2. Coordinated Human Tissue Donation Program — legislative findings and purpose; program established.
130-9.3. Powers and duties relative to nutrition programs.
130-9.4. Counties to recover indirect costs on certain federal public health or mental health grants.
130-9.5. Nursing home advisory committees.
130-9.6. Sanitary engineering and sanitation units.
130-10. Employees of Department of Human Resources.
130-11. Duties of the administrative staff of the Department of Human Resources.

Article 3.

Local Health Departments.

- 130-13. Provision of public health services.
130-14. District health departments.
130-14.1. Dissolution of a district health department.
130-17. Powers and duties of local boards; expenditures.
130-22.1. [Repealed.]

Article 6.

State Laboratory of Public Health.

- 130-30. Laboratory established.
130-31. To make examinations.
130-32. Fees.
130-33 to 130-35. [Repealed.]

Article 7.

Vital Statistics.

- 130-36. State Registrar.
130-42. Notification of death.
130-42.1. Disposal permits; permits for disinterment and reinterment; authorization for cremation.
130-43. Fetal death registration.
130-45. [Repealed.]

Sec.

- 130-46. Death registration.
130-47. [Repealed.]
130-48. Registration of divorces and annulments.
130-49. Registration of marriage certificates; duty of registers of deeds; forms; furnishing copies; copies as evidence.
130-50. Birth registration.
130-51. Registration of birth certificate more than five days and less than one year after birth.
130-52. Registration of birth one year or more after birth.
130-54. Contents of birth certificate.
130-56. Persons required to keep records.
130-58.1. [Repealed.]
130-59. State Registrar to supply blanks; to perfect and preserve birth and death certificates.
130-60. Amendment of birth and death certificate.
130-63. Duties of local registrars as to birth and death certificates; reports; copies to be forwarded by State Registrar.
130-66. Certified copies of records; fee.
130-69. Violations of Article; penalty.

Article 8.

Infectious Diseases Generally.

- 130-80. Local health director has quarantine and isolation authority.
130-82.1. School principals and day-care operators to report.
130-83. Local health directors to report cases to Commission for Health Services.

Article 9.

North Carolina Immunization Law.

- 130-87. Immunization required.
130-88. Obtaining immunization.
130-89. Certificate of immunization.
130-90. Submission of certificate to day-care facility and school authorities; record maintenance; reporting.
130-91. Medical exemption.
130-92. Religious exemption.
130-93. Delayed applicability.
130-93.01. Enforcement.

Article 10.

Venereal Disease.

Part 1. Venereal Disease.

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

GENERAL STATUTES OF NORTH CAROLINA

Article 11.

Tuberculosis.

Part 1. Prevention of Spread of Tuberculosis.

Sec.

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

Part 2. Tuberculous Prisoners.

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

Article 12.

Sanitary Districts.

130-124. Procedure for incorporating district.

130-128. Corporate powers.

130-129. Organization of board.

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

130-152. Further validation of creation of districts.

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

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

130-153. Further validation of dissolution of districts.

130-154. Further validation of bonds of districts.

130-156.4. Dissolution of sanitary districts; referendum.

Article 13.

Sanitary Sewage Disposal.

130-157. [Recodified.]

130-158, 130-159. [Repealed.]

130-160. Sanitary sewage disposal; rules.

130-161 to 130-166. [Repealed.]

Article 13B.

Solid Waste Management.

130-166.16. Definitions.

130-166.17. Solid waste unit in Department of Human Resources.

130-166.18. Solid waste management program.

130-166.19. Receipt and distribution of funds.

130-166.20. Single agency designation.

130-166.20A. Effect on laws applicable to water pollution control.

130-166.21. Recordation of sanitary landfill site permits.

130-166.21A. Sludge deposits at sanitary landfills.

130-166.21B. Imminent hazard.

130-166.21C. Information received pursuant to this Article.

130-166.21D. Construction.

130-166.21E. Penalties; remedies.

130-166.21F. Sections 130-203 and 130-205 inapplicable.

Article 13C.

Ground Absorption Sewage Disposal System Act of 1973.

Sec.

130-166.29. Appeal to local board of health.

130-166.32. Exemptions.

Article 13D.

North Carolina Drinking Water Act.

130-166.39. Short title.

130-166.40. Purpose.

130-166.41. Definitions.

130-166.42. Scope.

130-166.43. Drinking water regulations.

130-166.44. Department of Human Resources to examine waters.

130-166.45. Department to provide advice; submission and approval of public water system plans.

130-166.46. Disinfection by public water systems.

130-166.47. Condemnation of lands for public water systems.

130-166.48. Sanitation of watersheds; rules; inspections.

130-166.49. Variances and exemptions; considerations; duration; condition; notice and hearing.

130-166.50. Imminent hazard; power of the Secretary.

130-166.51. Emergency plan for drinking water; emergency circumstances defined.

130-166.52. Notice of noncompliance, failure to perform monitoring, variances and exemptions.

130-166.53. Prohibited acts.

130-166.54. Penalties; remedies; contested cases.

130-166.55. Powers of the Secretary.

130-166.56. Construction.

Article 14.

Meat Markets and Abattoirs.

130-169. Application of Article.

Article 14A.

Sanitation of Shellfish and Crustacea.

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

Article 14B.

Sanitation of Scallops.

130-169.05. Agreements with other agencies.

Article 15.**Private Hospitals and Public and Private Educational Institutions.**

Sec.

- 130-170.01. Regulation of sanitation in schools by Commission for Health Services and Department of Human Resources.
- 130-170.02. Inspection, filing of reports and corrective action by principal.

Article 15A.**Home Health Agencies.**

- 130-170.2. Home health services to be provided in all counties.

Article 17A.**Cancer Studies.**

- 130-186.4 to 130-186.8. [Reserved.]

Article 17B.**Arthritis Program.**

- 130-186.9. Establishment of Arthritis Program.

Article 20A.**Treatment of Self-Inflicted Injuries upon Prisoners.**

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

Article 21.**Postmortem Medicolegal Examinations.**

- 130-199. Duties of medical examiners upon receipt of notice; reports; fees.
- 130-200. When autopsies and other pathological examinations to be performed.
- 130-202.1. When medical examiner's permission necessary before embalming, burial and cremation.

Article 22.**Remedies.**

- 130-205. Injunction.

Article 26.**Regulation of Ambulance Services.**

- 130-230. Permit required to operate ambulance.

Sec.

- 130-232. Standards for equipment; inspection of medical equipment and supplies required for ambulances.
- 130-233. Certified personnel required.

Article 28.**Mass Gatherings.**

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

Article 29.**Perinatal Health Care.**

- 130-254. Purpose.
- 130-255. Establishment of program.
- 130-256. Powers and duties of Secretary.
- 130-257. Statewide Advisory Council.
- 130-258. Coordination of existing programs.
- 130-259 to 130-263. [Reserved.]

Article 30.**Nursing Home Patients' Bill of Rights.**

- 130-264. Legislative intent.
- 130-265. Definitions.
- 130-266. Declaration of patients' rights.
- 130-266.1. Peer review.
- 130-267. Incompetence.
- 130-268. No waiver of rights.
- 130-269. Notice to patient.
- 130-270. Responsibility of administrator.
- 130-271. Staff training.
- 130-272. Civil action.
- 130-273. Enforcement and investigation; confidentiality.
- 130-274. Revocation of license.
- 130-275. Penalties; remedies.
- 130-276. Provisions inapplicable.
- 130-277. No interference with practice of medicine or physician-patient relationship.
- 130-278 to 130-282. [Reserved.]

Article 31.**Glaucoma and Diabetes Program.**

- 130-283. Department of Human Resources to establish program.
- 130-284. Powers and duties of the Department.
- 130-285. Rules and regulations.

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 shall have the 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; 1979, c. 504, s. 15.)

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).

Session Laws 1977, c. 897, s. 2, effective March 1, 1979, amended subsection (e) of this section by adding a new subdivision (7), relating to community advisory committees. Session Laws 1977, 2nd Sess., c. 1192, s. 1, ratified June 16, 1978 and effective on ratification, amended s. 2 of the 1977 amendatory act so as to add to

the General Statutes a new § 130-9.5, rather than adding a new subdivision (7) to subsection (e) of this section. See § 130-9.5 and the Editor's note thereto.

The 1979 amendment deleted the requirement of the first sentence of subsection (g) that the Commission for Health Services consult with a public health standards advisory committee to be appointed by the Secretary of Human Resources, and inserted "the" before "power" near the beginning of that sentence.

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

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."

For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

§ 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, Session Laws 1975, c. 694, s. 1. See now referred to in this section, was repealed by § 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.

§ 130-9.5. Nursing home advisory committees. — (a) **Statement of Purpose.** — It is the purpose of the General Assembly that community advisory committees work to maintain the spirit of the Nursing Home Bill of Rights (Chapter 130, Article 30) within the nursing homes in this State. It is the further purpose of the General Assembly that the committees promote community involvement and cooperation with nursing homes and an integration of these homes into a system of care for the elderly.

(b) **Establishment and Appointment of Committees.** — A community advisory committee shall be established in each county which has a nursing home, shall serve all the homes in the county, and shall work with each home for the best interests of the persons residing in each home. In a county which has one, two, or three nursing homes, the committee shall have five members. In a county with four or more nursing homes, the committee shall have one additional member for each nursing home in excess of three.

In each county with four or more nursing homes, the committee shall establish a subcommittee of five members from the committee for each nursing home in the county. Each member must serve on at least one subcommittee.

Each committee shall be appointed by the board of county commissioners. Of the members, a minority (not less than one third, but as close to one third as possible) must be chosen from among persons nominated by a majority of the chief administrators of nursing homes in the county. If the nursing home administrators fail to make a nomination within 45 days after written notification has been sent to them by the board of county commissioners requesting a nomination, such appointments may be made by the board of county commissioners without nominations.

(c) **Terms of Office.** — Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a three-year term. Persons who were originally nominees of nursing home chief administrators, or who were appointed by the board of county commissioners when the nursing home administrators failed to make nominations may not be reappointed without the consent of a majority of the nursing home chief administrators within the county. If the nursing home chief administrators fail to approve or reject the reappointment within 45 days of being requested by the board of county commissioners, the commissioners may reappoint the member if they so choose.

(d) **Vacancies.** — Any vacancy shall be filled by appointment of a person for a one-year term. Any person replacing a member nominated by the chief administrators or a person appointed when the chief administrators failed to make a nomination shall be selected from among persons nominated by the administrators, as provided in subsection (b). If the county commissioners fail to appoint members to a committee, or fail to fill a vacancy, the appointment may be made or vacancy filled by the Secretary of Human Resources or the Secretary's designee no sooner than 45 days after the commissioners have been notified of the appointment or vacancy if nomination or approval of the nursing home administrators is not required. If nominations or approval of the nursing home administrators is required, the appointment may be made or vacancy filled by the Secretary of Human Resources or the Secretary's designee no sooner than 45 days after the commissioners have received the nomination or approval, or no sooner than 45 days after the nursing home administrators' 45-day period for action has expired.

(e) **Officers.** — The committee shall elect from its members a chairman, to serve a one-year term.

(f) **Qualifications.** — Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by a committee, or employee or governing board member or immediate family member of an employee or governing board member of a home served by a committee, or immediate family member of a

patient in a home served by a committee may be a member of a committee. Membership on a committee shall not be considered an office as defined in G.S. 128-1 or 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Division of Aging, which shall supply a copy to the Division of Facilities Services.

(g) The Division of Aging, Department of Human Resources, shall develop training materials, which shall be distributed to each committee member and nursing home. Each committee member must receive training as specified by the Division of Aging prior to exercising any power under subsection (h) of this section. The Division of Aging, Department of Human Resources, shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

(h) Duties. —

- (1) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.
- (2) Each committee shall quarterly visit the nursing home it serves. For each such official quarterly visit, a majority of the committee members shall be present. In addition, each committee may visit the nursing home it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this subdivision, and a majority of the subcommittee members must be present for any visit.
- (3) Each member of a committee shall have the right, between 10:00 a.m. and 8:00 p.m., to enter into the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, a member shall have a right to enter only homes served by subcommittees of which he is a member.
- (4) The committee or subcommittee 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 interest of any patient. The names of all complaining persons shall remain confidential unless written permission is given for disclosure.
- (5) Each home shall cooperate with the committee as it carries out its duties.
- (6) Before entering into any nursing home, the committee, subcommittee, or member shall identify itself to the person present at the facility who is in charge of the facility at that time.

(i) Nursing Homes to Cooperate. — In order for a nursing home as defined by G.S. 130-9(e) to be licensed under that subsection, the home shall cooperate with a community advisory committee. (1977, c. 897, s. 2; 1977, 2nd Sess., c. 1192, s. 1.)

Cross Reference. — See the Editor's note to § 130-9.

Editor's Note. — This section was added by Session Laws 1977, c. 897, s. 2, as amended by Session Laws 1977, 2nd Sess., c. 1192, s. 1. Session Laws 1977, c. 897, s. 2, prior to its amendment by the 1977, 2nd Sess., act, added a new subdivision (7) to subsection (e) of § 130-9.

Session Laws 1977, c. 897, s. 4, as amended by Session Laws 1977, 2nd Sess., c. 1192, s. 2, provides:

"The provisions of this act shall become effective January 1, 1978, except that G.S. 130-9.5(a) through G.S. 130-9.5(g), as proposed by Section 2, shall take effect July 1, 1978, and G.S. 130-9.5(h) and (i), as proposed by Section 2, shall take effect March 1, 1979.

"Community advisory committees shall be appointed no later than January 1, 1979, in counties which have nursing homes prior to that date, and the initial terms of office of those committee members shall expire February 29, 1980."

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."

§ 130-9.6. Sanitary engineering and sanitation units. — For the purpose of promoting a safe and healthful environment, and developing such corrective measures as may be required to minimize environmental health hazards, the Department of Human Resources shall maintain appropriate units of sanitary engineering and sanitation. The Secretary of Human Resources shall employ such sanitary engineers, sanitarians, and other scientific personnel as are necessary to carry out the provisions of this Chapter and to make such other sanitary engineering and sanitation investigations and inspections as are required of the Department of Human Resources by law, or by regulations of the Commission for Health Services. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 788, s. 4.)

Cross Reference. — As to regulation of water systems supplying drinking water, see § 130-166.39 et seq.

Editor's Note. — This section was formerly § 130-157. It was transferred to its present

position by Session Laws 1979, c. 788, s. 4. The 1979 act also substituted "Chapter" for "Article" near the middle of the second sentence.

§ 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.

§ 130-11. Duties of the administrative staff of the Department of Human Resources. — The administrative staff of the Department of Human Resources shall have and exercise such administrative duties and authority as may be assigned by the Department of Human Resources, including the following:

- (5) To conduct studies and research concerning the prevention of disease, the promulgation of life and the promotion of physical health and mental efficiency of the people of the State; including occupational health hazards and occupational diseases arising in and out of the course of employment in industry; and to make recommendations for the elimination or the reduction of such occupational health hazards. The industrial hygiene unit of the Department of Human Resources shall, under the direction and supervision of the Industrial Commission, carry out all of the provisions of the Workers' Compensation Act with respect to occupational disease work, and the Department of Human Resources shall file with the Industrial Commission sufficient reports

to enable it to carry out the provisions of the occupational disease law. After all occupational disease work required by the Industrial Commission has been completed, the Department of Human Resources may use the services of the industrial hygiene unit for such other work as the Department may deem advisable.

(1979, c. 714, s. 2.)

Editor's Note. —

The 1979 amendment, effective July 1, 1979, substituted "Workers'" for "Workmen's" near the middle of the second sentence in subdivision (5).

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

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.

(e) Members of county boards of health shall serve three-year terms, but no board member may serve more than three consecutive three-year terms. In order to establish a uniform staggered-term structure for a county board of health whereby three members' terms will expire each year, the board of county commissioners of any county without such uniform structure is authorized, upon expiration of the term of any board of health member, to reappoint the member or appoint his successor to a one-year or a two-year term as appropriate to achieve the uniform staggered-term structure. Any subsequent appointments for such member or his successor shall be for three-year terms.

(1973, c. 1151; 1975, c. 272; 1979, c. 621.)

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).

The 1979 amendment added the second sentence to subsection (e).

As the rest of the section was not changed by the amendments, only subsections (c) and (e) are 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 130-14(b)" following "department" in present deleted "established under G.S. 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 6.

State Laboratory of Public Health.

§ 130-30. Laboratory established. — For the better protection of the public health there is established under the control of the Department of Human Resources a State Laboratory of Public Health. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7056; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 788, s. 3.)

Editor's Note. —

The 1979 amendment deleted "and management" after "control" near the middle of the section, and substituted "Public Health" for "Hygiene" at the end of the section.

Session Laws 1979, c. 788, s. 3, changed the Article title to its present wording from "State Laboratory of Hygiene."

§ 130-31. To make examinations. — The Department of Human Resources is authorized to make in its laboratory such examinations as the public health may require. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7057; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 788, s. 3.)

Editor's Note. —

The 1979 amendment rewrote this section.

§ 130-32. Fees. — All fees incurred under Article 6 prior to June 5, 1979 shall remain due and payable. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7059; 1935, c. 340; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 788, s. 3.)

Editor's Note. —

The 1979 amendment rewrote this section.

§§ 130-33 to 130-35: Repealed by Session Laws 1979, c. 788, s. 3.

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. — (a) Each spontaneous fetal death occurring in the State of 20 completed weeks gestation or more, as calculated from the first day of the last normal menstrual period until the day of delivery, shall be reported within five days after delivery to the local registrar of the registration district in which the delivery occurred. The report shall be made on a form prescribed and furnished by the State registrar.

(b) When fetal death occurs in a hospital or other medical facility, the person in charge of the facility or his designated representative shall obtain the cause of fetal death and other required medical information over the signature of the attending physician, and shall prepare and file the report with the local registrar.

(c) When a fetal death occurs outside of a hospital or other medical facility, the physician in attendance at or immediately after the delivery shall prepare and file the report. When a fetal death is attended by a physician's assistant or a certified nurse-midwife, the supervising physician shall prepare and file the report. Fetal deaths attended by all other persons shall be treated as deaths without medical attendance as provided for in G.S. 130-46 and the medical examiner shall prepare and file the report. (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; 1979, c. 95, s. 1.)

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

The 1979 amendment, effective July 1, 1979, rewrote this section.

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 certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death, except when the death falls within the circumstances described in G.S. 130-198. In the absence of the physician or with his approval, the certificate may be completed and signed by an associate physician, the chief medical officer of the hospital or facility in which the death occurred, or a physician who performed an autopsy upon the decedent, provided such individual has access to the medical history of the deceased and views the deceased at or after death, and provided further that death is due to natural causes. Indefinite and unsatisfactory terms denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient as a cause of death, and any certificate containing any such indefinite or unsatisfactory terms, as defined by the State registrar, shall be returned to the person making the medical certificate for correction and more definite statement.

(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 three 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; 1979, c. 95, ss. 2, 3.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, rewrote subsection (c) and substituted "three" for "five" in the first sentence of subsection (d).

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. — (a) A certificate of birth for each live birth, regardless of the gestation period, which occurs in this State shall be filed with the local registrar of the district in which the birth occurs within five days after such birth and shall be registered by such registrar if it has been completed and filed in accordance with this section. Such certificate shall be on the form adopted and furnished by the State registrar.

(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility or his designated representative shall obtain the personal

data, prepare the certificate, secure the signatures required by the certificate, and file it with the local registrar. The physician or other person in attendance shall provide the medical information required by the certificate and certify to the facts of birth within five days after the birth. If the physician or other person in attendance does not certify to the facts of birth within the five-day period, the person in charge of the facility may complete and sign the certificate.

(c) When a birth occurs outside a hospital or other medical facility, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

- (1) The physician in attendance at or immediately after the birth, or in the absence of such a person,
- (2) Any other person in attendance at or immediately after the birth, or in the absence of such a person,
- (3) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance and the child is first removed from the conveyance in this State, the birth shall be registered in the registration district where the child is first removed from the conveyance, and such place shall be considered the place of birth.

(e) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child and the surname of the child shall be the same as that of the husband, unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate without the written consent, under oath, of both the father and the mother, in which case, upon written request of both parents, the surname of the child shall be entered on the certificate as that of the father. In all other cases a child born out of wedlock shall take the same surname as that of the mother. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C. S., s. 7101; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 4; c. 417.)

Editor's Note. — The first 1979 amendment, effective July 1, 1979, rewrote this section.

The second 1979 amendment substituted "unmarried at all times from date of conception through date of birth" for "not married at the time of either conception or birth or between

conception and birth" near the beginning of the first sentence of subsection (f).

For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

§ 130-51. Registration of birth certificate more than five days and less than one year after birth. — Any birth may be registered more than five days and less than one year after birth in the same manner as births are registered under this Article within five days of birth. Such registration shall have the same force and effect as if the registration had occurred within five days of birth: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required by G.S. 130-50. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 5.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "one year" for

"four years" near the beginning of the section.

§ 130-52. Registration of birth one year or more after birth. — (a) When the birth of a person born in this State has not been registered within one year after

birth, a delayed certificate may be filed with the register of deeds in the county in which the birth occurred in accordance with regulations promulgated by the State Registrar. Each such birth must be registered in duplicate on forms approved and furnished by the State Registrar. Such certificate so registered shall have the same evidentiary value as those registered within five days. Certificates of birth registered one year or more after the date of occurrence shall be marked "delayed" and show on their face the date of the delayed registration. A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate. The register of deeds shall forward the original and duplicate certificate to the Department of Human Resources for final approval. If the certificate complies with the rules and regulations and has not been previously registered, the State Registrar shall file the original and return the duplicate to the register of deeds for recording.

(b) When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the State Registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence, the State Registrar shall not register the delayed certificate and shall advise the applicant of the reasons for this action. In the event the deficiencies are not corrected, the registration official shall advise the applicant of his right of appeal to a court of competent jurisdiction. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 80, s. 8; c. 1031, s. 1; 1973, c. 476, s. 128; 1979, c. 95, s. 6.)

Editor's Note. —

The 1979 amendment, effective July 1, 1979, substituted "one year" for "four years" near the

middle of the first sentence of subsection (a), and near the beginning of the fourth sentence of subsection (a).

§ 130-54. Contents of birth certificate. — The certificate of birth shall contain, as a minimum, those items recommended by the federal agency responsible for national vital statistics, except as the same may be amended or changed by the State Registrar. Information contained in certificates or reports authorized by this Article may be filed and registered by photographic, electronic or other means as prescribed by the State Registrar. (1913, c. 109, s. 14; C. S., s. 7102; 1949, c. 161, s. 2; 1955, c. 951, s. 15; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 7.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, rewrote this section.

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).

§ 130-56. Persons required to keep records. — (a) All persons in charge of hospitals or other institutions, public or private, to which persons resort for treatment of diseases or confinement, or to which persons are committed by process of law, shall make a record of personal data concerning each person admitted or confined to such institution. The record shall include such information as required for the certificates of birth and death and the reports of spontaneous fetal death required by this Article. The record shall be made at the time of admission from information provided by the person being admitted or confined, but when it cannot be so obtained, the information shall be obtained from relatives or other persons acquainted with the facts.

(b) When a dead body or dead fetus of 20 weeks gestation or more is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of

the person to whom the body or fetus is released, and the date of removal from the institution. If final disposition is made by the institution, the date, place, and manner of disposition shall also be recorded.

(c) A funeral director, embalmer, or other person who removes from the place of death, transports or makes final disposition of a dead body or fetus, in addition to filing any certificate or other report required by this Article or regulations promulgated hereunder, shall keep a record which shall identify the body, and such information pertaining to the receipt, removal, delivery, burial, or cremation of such body as may be required by the State Registrar.

(d) Records maintained under this section shall be retained for a period of not less than three years and shall be made available for inspection by the State Registrar or his representative upon demand. (1913, c. 109, s. 16; C. S., s. 7104; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 8.)

Editor's Note. — The 1979 amendment, section as present subsection (a) and added effective July 1, 1979, rewrote the former subsections (b), (c), and (d).

§ 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.

§ 130-63. Duties of local registrars as to birth and death certificates; reports; copies to be forwarded by State Registrar.

(b) The State Registrar shall furnish to the register of deeds upon request a copy of each birth and death certificate regarding a resident of such register's county which was filed in a county other than the county of residence; provided that such copy shall not be furnished in the case of a child born out of wedlock. Such copies shall be forwarded within 90 days, through the local health department, to the register of deeds of the county of residence.

(1979, c. 95, s. 9.)

Editor's Note. —

The 1979 amendment, effective July 1, 1979, deleted "Upon receipt of the original certificates of birth, death and fetal death from the local registrars of vital statistics" at the beginning of the first sentence of subsection (b) and

substituted "the" for "each" before "register" and inserted "birth and death" near the beginning of that sentence.

As subsection (a) 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).

While certified copies of records are admitted in evidence, the originals are not thereby made incompetent. *State v. Joyner*, 295 N.C. 55, 243 S.E.2d 367 (1978).

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.)

Cross Reference. — For statute providing the maximum punishment for felonies, effective July 1, 1980, see § 14-1.1.

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).

Amendment Effective July 1, 1980. — Session Laws 1979, c. 760, s. 5, effective July 1, 1980, will amend subsection (c) to read as follows: "(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 be punished as a Class I felon."

Session Laws 1979, c. 760, s. 6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

ARTICLE 8.

*Infectious Diseases Generally.***§ 130-80. Local health director has quarantine and isolation authority. —**

(a) The local health director is empowered to exercise quarantine authority and isolation authority within his jurisdiction.

(b) "Quarantine authority" means the authority to limit the freedom of movement of persons or animals, which have been exposed or are reasonably suspected of having been exposed to a communicable disease, for a period of time as may be necessary to prevent the spread of that disease. The term also means the authority to limit the freedom of movement of persons who have not received immunizations against a communicable disease listed in G.S. 130-87 when the local health director determines that such immunizations are required to control an outbreak or threatened outbreak of that disease.

(c) "Isolation authority" means the authority to separate for the period of communicability infected persons from other persons, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent from infected persons to other persons who are susceptible or who may spread the agent to others.

(d) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a well person from an infected person or animal, through the agency of an intermediate animal, host or vector or through the inanimate environment.

(e) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease. (1957, c. 1357, s. 1; 1979, c. 192, s. 1.)

Editor's Note. — The 1979 amendment designated the former section as subsection (a), and added subsections (b), (c), (d), and (e).

§ 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).

§ 130-82.1. School principals and day-care operators to report. — Every principal of a school and operator of a day-care facility, as defined in G.S. 110-86(3), shall notify the local health director of the name and address of any person within his school or day-care facility whom he or his staff has reason to suspect of being afflicted with a disease declared by the Commission for Health Services to be reportable. (1979, c. 192, s. 2.)

§ 130-83. Local health directors to report cases to Commission for Health Services. — (a) It shall be the duty of the local health director to report all cases of diseases reported to him pursuant to G.S. 130-81, G.S. 130-82 or G.S. 130-82.1 within 24 hours of the receipt of such report, to the Secretary of Human Resources, and to make this report on forms supplied him by the Secretary of Human Resources and in accordance with the rules and regulations adopted by the Commission for Health Services.

(b) The reports in the possession of the local health director or Secretary of Human Resources which contain the names and addresses of persons afflicted or believed or suspected of being afflicted with a disease declared to be reportable shall not be public records as defined in G.S. 132-1. (1917, c. 263, s. 9; C. S., s. 7153; 1921, c. 223, s. 3; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 192, s. 3.)

Editor's Note. —

The 1979 amendment designated the former section as subsection (a), substituted "G.S.

130-81, G.S. 130-82 or G.S. 130-82.1" for "G.S. 130-81 or 130-82" near the middle of subsection (a), and added subsection (b).

§ 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.

North Carolina Immunization Law.

§ 130-87. Immunization required. — (a) Every child present 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. Every parent, guardian, person in loco parentis and person or agency, whether governmental or private, with legal custody of a child shall have the responsibility to insure that their child has received the required immunization at the age required by the Commission of Health Services; and, if a child has not received the required immunizations by the specified age, such persons shall have the responsibility to obtain the required immunization for their child as soon as possible after the lack of the required immunization is determined.

(b) Any child who has received immunization for measles prior to his obtaining 12 months of age shall be required to obtain a second measles immunization after the child has obtained 12 months of age in order to satisfy the requirement of subsection (a) with respect to immunization against measles.

(c) The Commission for Health Services shall promulgate and the Department of Human Resources shall enforce rules concerning the implementation of the immunization program. Such rules shall provide for:

- (1) The child's age for administering each vaccine;
- (2) The number of doses of each vaccine;
- (3) Exemptions from the immunization requirements where medical practice suggests that immunization would not be in the best health interests of a specific category of children; and
- (4) The procedures and practices for administering such vaccine.

(d) Only vaccine preparations may be used which meet the standards of the United States Food and Drug Administration or its successor in licensing vaccines and are 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; 1979, c. 56, s. 1.)

Revision of Article. — This article, formerly consisting of §§ 130-87 through 130-93, was revised and rewritten by Session Laws 1979, c. 56, effective July 1, 1979. No attempt has been

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

have been added to the corresponding sections in the article as rewritten.

§ 130-88. Obtaining immunization. — The required immunization may be obtained from a physician licensed to practice medicine in this State or from the local health department. The local health department shall administer the required immunizations without charge. The Department of Human Resources shall provide the necessary vaccines to the local health departments. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1973, c. 476, s. 128; 1979, c. 56, s. 1.)

§ 130-89. Certificate of immunization. — The physician or local health department who administers the required vaccines shall give a certificate of such immunizations to the person who presented the child for immunization. The certificate shall state the name of the child, the name of the child's parent, guardian, or person responsible for the child obtaining the required immunization, the address of the child and the parent, guardian or responsible person, the date of birth of the child, the sex of the child, the number of doses of the vaccine given, the date the doses were given, and other relevant information which may be required by the Commission for Health Services. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1.)

§ 130-90. Submission of certificate to day-care facility and school authorities; record maintenance; reporting. — (a) No child shall attend any school (K-12), whether public, private or religious, or a day-care facility, as defined in G.S. 110-86(3), unless a certificate of immunization indicating that the child has received the immunizations required by G.S. 130-87 is presented to the school or facility. If on the first day of attendance of the child at the school or facility, a certificate of immunization is not presented to the principal of the school or operator of the facility, as defined in G.S. 110-86(7), or if a certificate of immunization indicating that the child has not received the required immunizations is presented, notice of such deficiency shall be given to the parent, guardian or responsible person by the principal or operator. The parent, guardian or responsible person shall have 30 calendar days from the first day of attendance in order to obtain the required immunization for the child. If the administration of vaccine in a series of doses given at medically approved intervals require a period in excess of 30 calendar days, additional days upon certification of a physician may be allowed in order to obtain the required immunization. Upon termination of the 30 calendar day or extended period, the principal or operator shall not permit any child to attend the school or facility unless he is immunized as required by G.S. 130-87.

(b) The school or day-care facility shall maintain on file immunization records for all children attending the school or facility which contain the information required for a certificate of immunization as specified in G.S. 130-89. Such certificates shall be open to inspection by agents of the Department of Human Resources and the local health department during normal business hours. Within 60 calendar days after the commencement of a new school year, the school shall file a report with the Department of Human Resources. The day-care facility shall file the report annually with the Department of Human Resources. The report shall be filed on forms prepared by the department and shall state the number of children attending the school or facility, the number of children who had not obtained the required immunization within 30 days of their first attendance, the number of children who received a medical exemption and the number of children who received a religious exemption. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1973, c. 632, s. 2; 1979, c. 56, s. 1.)

All children presently attending school in North Carolina are not required to be immunized against rubella as a requirement for continuance in school. All children enrolled in school for the first time in North Carolina after July 1, 1977, are required to be immunized

against rubella as a requirement for continuance in school. Opinion of Attorney General to Dr. J.N. McCormack, Head, Communicable Disease Control Branch, Division of Health Services, 47 N.C.A.G. 130 (1977).

§ 130-91. Medical exemption. — If a physician licensed to practice medicine in this State certifies that an immunization required by G.S. 130-87 is or may be detrimental to a child's health, the child is not required to receive the specified immunization until the physician certifies that the immunization will not be detrimental to the child's health. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1.)

§ 130-92. Religious exemption. — If the bona fide religious beliefs of a parent or person in loco parentis of a child are contrary to the immunization requirements contained in this Article, the child shall be exempt from such requirements. Upon submission of a written statement of the bona fide religious beliefs and their opposition to the immunization requirements, the child may attend the school or facility without presenting a certificate of immunization. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1.)

§ 130-93. Delayed applicability. — Notwithstanding the provisions of G.S. 130-90(a), a child who has attended school during the 1978-1979 year shall not be required to receive immunization, not required during such years, in order to attend school during the 1979-1980 year. However, such child shall be required to have received all the immunizations required by G.S. 130-87 before he may attend school during the 1980-1981 year. (1979, c. 56, s. 1.)

§ 130-93.01. Enforcement. — (a) Any person as defined in G.S. 130-87 who violates any provision of this Article or the rules promulgated hereunder shall be guilty of a misdemeanor and upon conviction shall be punished, notwithstanding the provisions of G.S. 130-203, by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than six months for each violation.

(b) The Secretary of Human Resources or the local health director may institute a civil action in the superior court of the county in which the defendant in the action resides for injunctive relief to prevent a threatened or continuing violation of any provision of this Article or any rule promulgated hereunder. The provisions of G.S. 130-205 shall be inapplicable to actions instituted pursuant to this section. (1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1.)

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. — When a sanitary district is organized as herein provided the sanitary district board selected under the provisions of this Article shall be a body politic and corporate and as such may sue and be sued in matters relating to such sanitary district. In addition, such board shall have the following powers:

- (1) To acquire, construct, maintain and operate sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems, water supply systems, water purification or treatment plants and such other utilities as may be necessary for the preservation and promotion of the public health and sanitary welfare within the district, such utilities to be constructed, operated, and maintained in accordance with rules and regulations promulgated by the Commission for Health Services.
- (9) a. To contract with any person, firm, corporation, city, town, village or political subdivision of the State both within or without the corporate limits of the district to supply raw water without charge to said person, firm, corporation, city, town, village or political

subdivision of the State in consideration of said person, firm, corporation, city, town, village or political subdivision permitting the contamination of its source of water supply by discharging sewage therein and to construct all improvements necessary or convenient to effect the delivery of said water at the expense of the district when in the opinion of the sanitary district board and the Commission for Health Services, it will be for the best interest of the district.

- b. To contract with any person, firm, corporation, city, town, village or political subdivision of the State within or without the corporate limits of the district to supply raw or filtered water 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.
- c. To contract with any person, firm, corporation, city, town, village or political subdivision of the State within or without the corporate limits of the district for the treatment of the district's sewage in a sewage disposal or treatment plant owned and constructed or to be constructed by such person, firm, corporation, city, town, village or political subdivision of the State and upon such terms and conditions as the governing body of such district and person, firm, corporation or the governing body of such city, town, village or political subdivision of the State shall agree upon.

(1979, c. 520, s. 2; c. 619, s. 7.)

Editor's Note. — The 1979 amendment inserted "and sewer service" near the beginning of paragraph b of subdivision (9), and added "and adequate sewer service" at the end of paragraph b of subdivision (9). The amendatory act also repealed Session Laws 1973, 2nd Sess., c. 882, s. 1, which made the same changes, but which applied only in counties with a population of more than 70,000.

The 1979 amendment substituted "sewage collection and disposal systems of all types,

including septic tank systems or other on-site collection or disposal facilities or systems, water supply systems, water purification or treatment plants" for "a sewerage system, sewage disposal or treatment plant, water supply system, water purification or treatment plant" near the beginning of subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivisions (1) and (9) are set out.

§ 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.

Sanitary Sewage Disposal.

§ 130-157: Recodified as § 130-9.6 by Session Laws 1979, c. 788, s. 4.

§§ 130-158, 130-159: Repealed by Session Laws 1979, c. 788, s. 2.

Cross Reference. — As to regulation of water systems supplying drinking water, see § 130-166.39 et seq.

§ 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 3,000 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 3,000 gallons design capacity shall be approved under rules and regulations promulgated by the Environmental Management Commission 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 citizen of an affected county, may review its findings under subsection (b) of this section. Subject to such review, the Commission's findings 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; 1979, c. 788, s. 2.)

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).

The 1979 amendment substituted "Environmental Management Commission" for

"Board of Water and Air Resources" near the end of the third sentence of subsection (a), and deleted "a local board of health or upon request of" after "request of" near the middle of the first sentence of subsection (c).

Session Laws 1979, c. 788, s. 2, changed the title of this Article to its present wording from "Water and Sewer Sanitation."

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

§§ 130-161 to 130-166: Repealed by Session Laws 1979, c. 788, s. 2.

Cross Reference. — As to regulation of water systems supplying drinking water, see § 130-166.39 et seq.

Editor's Note. — Repealed §§ 130-161.1 and 130-166 were amended by Session Laws 1979, c. 98, s. 1.

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. — As used in this Article, the term:

- (1) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
- (2) "Federal act" means the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended.
- (3) "Garbage" means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.
- (4) "Hazardous waste," means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
 - a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
- (5) "Hazardous waste facility" means a facility for the storage, collection, processing, treatment, recycling, recovery or disposal of hazardous waste.
- (6) "Hazardous waste generation" means the act or process of producing hazardous waste.
- (7) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.
- (8) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.
- (9) "Natural resources" means all materials which have useful physical or chemical properties which exist, unused, in nature.
- (10) "Open dump" means a solid waste disposal site which is not a sanitary landfill.
- (10a) "Person" means an individual, corporation, company, association, partnership, unit of local government, or other legal entity.
- (11) "Recycling" means the process by which recovered resources are transformed into new products in such a manner that the original products lose their identity.

- (12) "Refuse" means all nonputrescible waste.
- (13) "Resource recovery" means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing such solid waste for recycling.
- (14) "Sanitary landfill" means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills promulgated under this Article.
- (15) "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.
- (16) "Solid waste" means any hazardous or nonhazardous garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, institutional, commercial, and agricultural operations, and from community activities. Such term does not include:
- a. Fowl and animal fecal waste;
 - b. Solid or dissolved material in
 1. Domestic sewage and sludges generated by the treatment thereof in sanitary sewage disposal systems which have a design capacity of more than 3000 gallons or which discharge effluents to the surface waters;
 2. Irrigation return flows; and
 3. Wastewater discharges and the sludges incidental thereto and generated by the treatment thereof which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Control Act, as amended (PL 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission; or
 - c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the North Carolina General Statutes;
 - d. Any radioactive material as defined by the North Carolina Radiation Protection Act, G.S. 104E-1 through G.S. 104E-23; or
 - e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through G.S. 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290).
- (17) "Solid waste disposal site" means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.
- (18) "Solid waste generation" means the act or process of producing solid waste.
- (19) "Solid waste management" means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.
- (20) "Solid waste management facility" means land, personnel and equipment used in the management of solid waste.
- (21) "Storage" means the containment of solid waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.
- (22) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any solid waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the

physical form or chemical composition of solid waste so as to render it nonhazardous. (1969, c. 899; 1975, c. 311, s. 2; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 1.)

Revision of Article. — Session Laws 1977, 2nd Sess., c. 1216, revised and rewrote this Article, substituting present §§ 130-166.16 through 130-166.21D for former §§ 130-166.16 through 130-166.21. Sections 130-166.21E and 130-166.21F were added by Session Laws 1977, 2nd Sess., c. 1205. No attempt has been made to

point out the changes effected by the revision; however, where appropriate, the historical citations to the old sections have been added to corresponding sections in the revised Article.

The 1979 amendment deleted “as determined by the Commission” after “‘hazardous waste’” near the beginning of subdivision (4).

§ 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 resources, and the Department shall employ and retain such qualified personnel as may be necessary. To the extent necessary, practicable and appropriate, the Department shall consult and coordinate with other State agencies, units of local government, the federal government, industries and individuals in the promotion of sanitary processing, treatment, disposal and overall management of solid waste and the recycling and recovery of resources. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 3; 1977, 2nd Sess., c. 1216.)

§ 130-166.18. Solid waste management program. — (a) 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;
- (2) Advise, consult, cooperate, and contract with other State agencies, units of local government, the federal government, 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; and
- (4) Develop a permit system governing the establishment and operation of solid waste management facilities. In connection with the above, no such permit shall be granted for a solid waste management facility having discharges which are point sources, until the Department of Human Resources has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the same are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department of Human Resources denies a permit for a solid waste management facility, it shall state in writing the reason for such denial and shall also state its

estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit.

(5) 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.

(b) The Commission shall promulgate and the Department shall enforce rules for the establishment, location, operation, maintenance, use and discontinuance of solid waste management sites and facilities. Such rules 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 rules 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.

(c) The Commission shall promulgate and the Department shall enforce rules concerning the management of hazardous waste. Such rules shall provide for:

- (1) Establishing criteria for hazardous wastes and identifying the characteristics of hazardous waste.
- (2) Record-keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities;
- (3) Proper labeling of hazardous waste containers;
- (4) Use of appropriate containers for hazardous waste;
- (5) A manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued;
- (6) Proper transportation of hazardous waste;
- (7) Treatment, storage and disposal standards of performance and techniques to be used by hazardous waste facilities;
- (8) Location; design, ownership and construction of hazardous waste facilities;
- (9) Plans to minimize unanticipated damage from any treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State;
- (10) Proper maintenance and operation of hazardous waste facilities, including requirements for ownership (including ownership by any person or the State), financial responsibility, training of personnel, continuity of operation and procedures for establishing and maintaining hazardous waste facilities;
- (11) Monitoring by owners or operators of hazardous waste facilities;
- (12) Inspection or copying of records required to be kept;
- (13) Obtaining and analyzing hazardous waste samples and samples of hazardous waste containers and labels from generators and transporters and from owners and operators of hazardous waste facilities;
- (14) A permit system governing the establishment and operation of hazardous waste facilities; and
- (15) Such additional requirements as may be necessary for the effective management of hazardous waste.

(d) The Commission shall have the authority to promulgate and the Department shall have the authority to enforce rules where appropriate for public participation in the development, revision, implementation and

enforcement of any regulation, guideline, information or program under this Article.

(e) The rules promulgated under this section shall be no less stringent than the most recent regulations promulgated under the federal act and may be amended from time to time as necessary.

(f) Prior to the issuance of any permit or an amendment of an existing permit for a hazardous waste facility, the department shall issue public notice and conduct a public hearing in any county in which a hazardous waste facility is to be located. Notice and public hearing shall be in accordance with G.S. Chapter 150A. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 4; c. 764, s. 1; 1977, c. 123; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 2; c. 694, s. 2.)

Editor's Note. —

The 1979 amendment inserted "and" near the middle of subdivision (1) of subsection (c), and deleted "and listing particular hazardous waste" at the end of that subdivision.

The 1979 amendment, effective July 1, 1979, added subsection (f).

Session Laws 1979, c. 694, s. 6, provides: "This act shall become effective on July 1, 1979, and shall not affect litigation pending at the time this act becomes effective."

§ 130-166.19. Receipt and distribution of funds. — The Department may accept loans and grants from the federal government and other sources for carrying out the purposes of this Article, and shall adopt reasonable policies governing the administration and distribution of such funds to units of local government, other State agencies, and private agencies, institutions or individuals for studies, investigations, demonstrations, surveys, planning, training, and construction or establishment of solid waste management facilities. (1969, c. 899; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1216.)

§ 130-166.20. Single agency designation. — The Department is hereby designated as the single State agency for purposes of the federal act or any State or federal legislation which has been or may be enacted to promote the proper management of solid waste. (1969, c. 899; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1216.)

§ 130-166.20A. Effect on laws applicable to water pollution control. — This Article shall not be construed as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of water pollution as now administered by the Environmental Management Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the Environmental Management Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143, of the General Statutes of North Carolina. (1977, 2nd Sess., c. 1216.)

§ 130-166.21. Recordation of sanitary landfill site permits. — (a) Whenever the Department of Human Resources approves a sanitary landfill site, the owner of the landfill site shall be granted both an original permit and a copy certified by the Secretary or his authorized representative. The permit shall include a legal description of the landfill site which would be sufficient as a description in an instrument of conveyance.

(b) Any person granted a sanitary landfill site permit shall file the certified copy of such permit in the register of deeds' office in the county or counties in which the landfill is located.

(c) The register of deeds shall record the certified copy and index it in the grantor index under the name of the owner of the landfill site.

(d) The permit shall not be effective unless the certified copy is filed as required under subsection (b). (1973, c. 444; c. 476, s. 128; 1977, 2nd Sess., c. 1216.)

§ 130-166.21A. Sludge deposits at sanitary landfills. — Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Control Act, as amended (PL 92-500), or permits generated under G.S. 143-215.1 by the Environmental Management Commission shall not be deposited in or on a sanitary landfill permitted hereunder unless in compliance with the rules concerning solid waste promulgated under this Article. (1977, 2nd Sess., c. 1216.)

§ 130-166.21B. Imminent hazard. — (a) An imminent hazard shall exist when in the judgment of the Secretary, as supported by findings of fact made by the Secretary, a condition exists in the State concerning solid waste which poses a serious, immediate risk to public health.

(b) In order to eliminate an imminent hazard, the Secretary may, without notice or hearing, issue an order requiring that immediate action be taken to protect the public health. Such order may be directed to a generator or transporter of solid waste or to the owner or operator of a solid waste management facility. (1977, 2nd Sess., c. 1216.)

§ 130-166.21C. Information received pursuant to this Article. — (a) For the purposes of this Article, upon a showing satisfactory to the Department or any authorized representative of the Department by any person that records, reports or information or particular part thereof, to which the Department or any authorized representative of the Department has access under G.S. 130-204, would divulge information entitled to protection under subsection (b), the Department shall consider such information or particular portion thereof confidential in accordance with the purposes of that subsection, except that such record, report, document or information may be disclosed to other officers, employees or authorized representatives of the Department concerned with carrying out this Article, or when relevant in any proceeding under this Article.

(b) For the purposes of this Article, whoever being an officer or employee of the Department publishes, divulges, discloses or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with the Department or any authorized representative of the Department which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided in subsection (a) shall be guilty of a misdemeanor and fined not more than five hundred dollars (\$500.00) or imprisoned not more than two years or both; and shall be removed from office or employment. (1977, 2nd Sess., c. 1216.)

§ 130-166.21D. Construction. — (a) This Article shall be interpreted as enabling the State to obtain federal financial assistance in carrying out its solid waste management program and to obtain the authority needed to assume primary enforcement responsibility for that portion of the solid waste management program concerning the management of hazardous waste.

(b) The solid waste management program concerning hazardous waste maintained by the State under this Article shall be no more comprehensive than

the hazardous waste program prescribed under the federal act. The rules and standards concerning hazardous waste promulgated under this Article shall be no more stringent than those rules, regulations and standards promulgated under the federal act. (1977, 2nd Sess., c. 1216; 1979, c. 464, s. 3.)

Editor's Note. — The 1979 amendment rewrote subsection (b).

Session Laws 1979, c. 464, s. 4, provides: "Notwithstanding the provisions of G.S. 130-166.21D(b) and pending the adoption of federal rules on hazardous waste, the Commission for Health Services may adopt rules no more stringent than the proposed standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, proposed to be subpart D of Part 250 of Title 40

of the *Code of Federal Rules*, as contained in the *Federal Register*, Volume 43, Number 243 (December 18, 1978), pages 58994 through 59028, with the following exceptions: proposed sections 250.40, 250.43-5, and 250.46 through 250.46-6. In accordance with such rules, the Department may issue permits for the establishment and operation of hazardous waste facilities. This section and the rules promulgated under its authority are repealed on March 1, 1981."

§ 130-166.21E. Penalties; remedies. — (a) The Department may impose an administrative penalty on any person:

- (1) Who fails to comply with this Article, any order issued hereunder, or the solid waste management rules, or
- (2) Who refuses to allow an authorized representative of the Commission for Health Services, any local board of health, or the Department of Human Resources a right of entry as provided for in G.S. 130-204.

(b) Each day of a continuing violation shall constitute a separate violation. Such penalty shall not exceed five hundred dollars (\$500.00) per day in the case of a violation involving nonhazardous waste. Such penalty shall not exceed five thousand dollars (\$5,000) per day in the case of a violation involving hazardous waste. In determining the amount of the penalty, the Department shall consider the degrees and extent of the harm caused by the violation and the cost of rectifying the damage. Any person assessed a penalty shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment.

(c) Any person wishing to contest a penalty or other order issued under this Article shall be entitled to an administrative hearing and judicial review conducted according to the procedures outlined in G.S. 150A-23 through 150A-52.

(d) The Secretary may bring a civil action in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the administrative penalty whenever a person:

- (1) Who has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or
- (2) Who 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.

(e) The Department may promulgate rules concerning the imposition of civil penalties under this section.

(f) In addition to any other remedies provided for in this section, the Secretary may institute a civil action in the superior court of the county in which the defendant in said civil action resides for injunctive relief to prevent a threatened or continuing violation of any provision of this Article or any order or regulation issued pursuant to this Article. (1977, 2nd Sess., c. 1205, s. 1; 1979, c. 464, s. 5.)

Editor's Note. — The 1979 amendment substituted "continuing" for "continued" near the beginning of the first sentence of subsection

(b), and "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)" near the middle of the second sentence of subsection (b).

§ 130-166.21F. Sections 130-203 and 130-205 inapplicable. — G.S. 130-203 and 130-205 shall be inapplicable to this Article. (1977, 2nd Sess., c. 1205, s. 2; 1979, c. 464, s. 6.)

Editor's Note. — The 1979 amendment substituted "130-205" for "130-305" near the middle of this section.

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, "Environmental Management Commission" for effective July 1, 1974, substituted "Board of Water and Air Resources."

ARTICLE 13D.

North Carolina Drinking Water Act.

§ 130-166.39. Short title. — This Article shall be known and may be cited as the North Carolina Drinking Water Act. (1979, c. 788, s. 1.)

§ 130-166.40. Purpose. — The purpose of this act is to regulate water systems within the State which supply drinking water to the public insofar as the water furnished may affect the public health. (1979, c. 788, s. 1.)

§ 130-166.41. Definitions. — As used in this Article, the term:

- (1) "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his authorized representative.
- (2) "Certified laboratory" shall mean any facility for performing bacteriological, chemical or other analyses on water which has received interim or final certification by either the Environmental Protection Agency or the Division of Health Services Laboratory Section certification program.
- (3) "Commission" shall mean the Commission for Health Services as created by G.S. 143B-142.
- (4) "Contaminant" shall mean any physical, chemical, biological or radiological substance or matter in water.
- (5) "Department" shall mean the Department of Human Resources as created by G.S. 143B-136.
- (6) "Drinking water regulations" shall mean regulations promulgated pursuant to this Article.
- (7) "Federal act" shall mean the Safe Drinking Water Act of 1974, P.L. 93-523, as amended.
- (8) "Federal agency" shall mean any department, agency or instrumentality of the United States.
- (9) "Maximum contaminant level" shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.
- (10) "National primary drinking water regulations" shall mean primary drinking water regulations promulgated by the Administrator pursuant to the federal act.
- (11) "Person" shall mean an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity.
- (12) "Public water system" shall mean a system for the provision to the public of piped water for human consumption if such system serves 15 or more service connections or which regularly serves 25 or more individuals. Such term includes:

- a. Any collection, treatment, storage, or distribution facility under control of the operator of such system and used primarily in connection with such system, and
- b. Any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.

A public water system, as defined above, is either a "community water system" or a "noncommunity water system":

- a. "Community water system" shall mean a public water system which serves 15 or more service connections or which regularly serves at least 25 year-round residents.
 - b. "Noncommunity water system" shall mean a public water system which is not a community water system.
- (13) "Secretary" shall mean the Secretary of the Department of Human Resources.
- (14) "Supplier of water" shall mean any person who owns, operates, or controls a public water system.
- (15) "Treatment technique requirement" shall mean a requirement of the drinking water regulations which specifies for a contaminant a specific treatment technique which leads to reduction in the level of such contaminant sufficient to comply with the drinking water regulations.
- (16) "Unit of local government" shall mean a county, city, consolidated city-county, sanitary district, or other local political subdivision, authority, or agency of local government. (1979, c. 788, s. 1.)

§ 130-166.42. Scope. — (a) The provisions of this Article shall apply to each public water system in the State, unless the public water system meets all of the following conditions:

- (1) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;
 - (2) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;
 - (3) Does not sell water to any person; and
 - (4) Is not a carrier which conveys passengers in interstate commerce.
- (b) Any provision of any charter granted to a public water system in conflict with the provisions of this Article is hereby repealed. (1979, c. 788, s. 1.)

§ 130-166.43. Drinking water regulations. — (a) The Commission shall promulgate and the Secretary shall enforce drinking water regulations to regulate water systems within the State which supply drinking water to the public insofar as the water furnished may affect the public health.

(b) Such regulations shall:

- (1) Specify contaminants which may, in the Commission's judgment, have an adverse effect on the public health;
- (2) Specify for each contaminant either:
 - a. A maximum contaminant level which is acceptable in water for human consumption, if it is feasible to establish the level of such contaminant in water in public water systems;
 - b. One or more treatment techniques which lead to a reduction in the level of such contaminants sufficient to protect the public health, if it is not feasible to establish the level of such contaminants in water in a public water system; and
- (3) Establish criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels and treatment techniques as determined in paragraph (2). Such regulations may provide for:

- a. The minimum quality of raw water which may be taken into a public water system;
- b. A program of laboratory certification;
- c. Monitoring and analysis;
- d. Record-keeping and reporting;
- e. Notice of noncompliance, failure to perform monitoring, variances and exemptions;
- f. Inspection of public water systems; inspection of records required to be kept and the taking of samples;
- g. Criteria for design and construction of new or modified public water systems;
- h. Review and approval of design and construction of new or modified public water systems;
- i. Siting of new public water system facilities;
- j. Variances and exemptions from the drinking water regulations; and
- k. Such additional criteria and procedures as may be required to carry out the purposes of this Article.

(c) The drinking water regulations may be amended from time to time as necessary to be in accordance with required federal regulations. (1979, c. 788, s. 1.)

§ 130-166.44. Department of Human Resources to examine waters. — The Department shall cause to be made examination of all waters and their sources and surroundings which are used as, or proposed to be used as, sources of public water supply, and the Department shall ascertain whether the same are suitable for use as public water supply sources. (1979, c. 788, s. 1.)

§ 130-166.45. Department to provide advice; submission and approval of public water system plans. — (a) The Department shall advise all persons and units of local government locating, constructing, altering or operating or intending to locate, construct, alter, or operate a public water system of the most appropriate source of water supply and the best practical method of purifying such water, 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 public water systems.

(b) All persons and units of local government constructing or altering a public water system shall give prior notice thereof and submit plans, specifications, and other information therefor to the Department. The Commission 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, Utilities Commission, and unit of local government of compliance or lack thereof with applicable law and rules and regulations of the Commission.

(c) No person or unit of local government shall begin construction or alteration of a public water system or award a contract for construction or alteration unless:

- (1) The plans for such construction or alteration have been prepared by an engineer licensed by the State of North Carolina;
- (2) The Department has determined that such system, as constructed or altered, will be capable of compliance with the drinking water regulations;

- (3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system;
- (4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system; and
- (5) The Department has approved the plan. (1979, c. 788, s. 1.)

§ 130-166.46. Disinfection by public water systems. — (a) The Department is hereby authorized to require disinfection by

- (1) Public water systems introduced on or after January 1, 1972, and
- (2) All public water systems, regardless of the date introduced, whenever
 - a. The maximum microbiological contaminant level is exceeded, or
 - b. Conditions exist which make continued use of the water potentially hazardous to health.

(b) Public water systems shall employ disinfection methods and procedures approved by the Department. (1979, c. 788, s. 1.)

§ 130-166.47. Condemnation of lands for public water systems. — All units of local government operating public water systems and all water companies operating under franchise from the State or units of local government, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their systems. Condemnation proceedings under this section shall be the same as prescribed by law under Chapter 40 of the General Statutes of North Carolina. (1979, c. 788, s. 1.)

§ 130-166.48. Sanitation of watersheds; rules; inspections. — (a) The Commission shall promulgate rules and regulations governing the sanitation of watersheds from which public drinking water supplies are obtained. In promulgating such regulations the Commission is authorized to consider the different classes of watersheds, taking into account general topography, nature of watershed development, density of population and need for frequency of sampling of raw water. The regulations shall govern the keeping of livestock, operation of recreational areas, maintenance of residences and places of business, disposal of sewage, establishment of cemeteries or burying grounds, and any other factors which would endanger the public water supply.

(b) Any person operating a public water system and furnishing water from unfiltered surface supplies shall have inspections made of the watershed area at least quarterly, and more often when, in the opinion of the Department, such inspections are necessary. (1979, c. 788, s. 1.)

§ 130-166.49. Variances and exemptions; considerations; duration; condition; notice and hearing. — (a) The Secretary may authorize variances from the drinking water regulations.

- (1) The Secretary may grant one or more variances to any public water system within the State from any requirement respecting a maximum contaminant level of an applicable drinking water regulation upon a finding that:

- a. Because of characteristics of the raw water sources reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels of the drinking water regulations despite application of the best technology, treatment techniques, or other means, which the Secretary finds are generally available (taking costs into consideration); and

b. The granting of a variance will not result in an unreasonable risk to health when considering the population exposed, the projected duration of the requested variance, and the degree to which the maximum contaminant level is being or will be exceeded.

(2) The Secretary may grant one or more variances to any public water system within the State from any requirement of a specified treatment technique of an applicable drinking water regulation upon a finding that the public water system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because the nature of the raw water source of such system.

(3) In consideration of whether the public water system is unable to comply with a contaminant level required by the drinking water regulations because of the nature of the raw water sources, the Secretary shall consider such factors as the following:

a. The availability and effectiveness of treatment methods for the contaminant for which the variance is requested;

b. Costs of implementing the best treatment(s) improving the quality of the raw water by the best means, or using an alternate source.

(4) In consideration of whether a public water system should be granted a variance from a required treatment technique because such treatment is unnecessary to protect the public health, the Secretary shall consider such factors as the following:

a. Quality of the water source including water quality data and pertinent sources of pollution;

b. Source protection measures employed by the public water system.

(b) The Secretary may authorize exemptions from the drinking water regulations.

(1) The Secretary may exempt any public water system within the State from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable drinking water regulation upon a finding that:

a. Due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement;

b. The public water system was in operation on the effective date of such contaminant level or treatment technique requirement; and

c. The granting of the exemption will not result in an unreasonable risk to health when considering the population exposed, the projected duration of the requested exemption, and the degree to which the maximum contaminant level is being or will be exceeded.

(2) In consideration of whether the public water system is unable to comply due to compelling factors, the Secretary shall consider such factors as the following:

a. Construction, installation, or modification of treatment equipment or systems;

b. The time needed to put into operation a new treatment facility to replace an existing system which is not in compliance;

c. Economic feasibility of immediate compliance.

(c) As a condition of issuance of either a variance or an exemption, the Secretary shall require that the public water system adhere to a schedule of compliance, including increments of progress, with each drinking water regulations for which the variance or exemption was issued. As a further condition of the variance or exemption, the Secretary shall require implementation by the public water system of such control measures as the Secretary deems necessary, during the period ending on the date of compliance with such requirement. The schedules of compliance must be prescribed within

one year of the date the variance or exemption has been granted. The compliance schedule for an exemption shall require compliance as expeditiously as practical but no later than January 1, 1981, for the initial drinking water regulations, and no later than seven years after the date of revised drinking water regulations setting new maximum contaminant levels or treatment techniques. Compliance dates can be extended two years if the public water supply has entered into an enforceable agreement to become part of a regional water system.

(d) The Secretary shall provide notice and opportunity for public hearing on proposed variances and proposed variance and exemption schedules. (1979, c. 788, s. 1.)

§ 130-166.50. Imminent hazard; power of the Secretary. — (a) An imminent hazard shall exist when in the judgment of the Secretary there exists a present or potential condition in a public water system which poses a serious, immediate risk to public health.

(b) In order to eliminate an imminent hazard, the Secretary may, without notice or hearing, issue an order requiring the person or persons involved to immediately take action necessary to protect the public health. A copy of the order shall be delivered by certified mail or personal service. Such order shall become effective immediately and shall remain in effect until modified or rescinded by the Secretary or by a court of competent jurisdiction. (1979, c. 788, s. 1.)

§ 130-166.51. Emergency plan for drinking water; emergency circumstances defined. — (a) The Secretary shall promulgate an adequate plan for the provision of drinking water under emergency circumstances. When in the judgment of the Secretary emergency circumstances exist in the State with respect to a need for drinking water, the Secretary may take such actions in accordance with the plan as the Secretary may deem necessary in order to provide drinking water.

(b) Emergency circumstances shall exist whenever the available supply of drinking water is inadequate. (1979, c. 788, s. 1.)

§ 130-166.52. Notice of noncompliance, failure to perform monitoring, variances and exemptions. — Whenever a public water system

- (1) Is not in compliance with the drinking water regulations,
- (2) Fails to perform an applicable testing procedure or monitoring required by the drinking water regulations,
- (3) Is subject to a variance granted for inability to meet a maximum contaminant level requirement,
- (4) Is subject to an exemption, or
- (5) Fails to comply with the requirements prescribed by a variance or exemption,

the supplier shall as soon as possible but not later than 48 hours after discovery notify the Department and give such public notification as may be prescribed by regulation. (1979, c. 788, s. 1.)

§ 130-166.53. Prohibited acts. — The following acts are prohibited:

- (1) Failure by a supplier of water to comply with this Article, any order issued hereunder, or the drinking water regulations;
- (2) Failure by a supplier of water to comply with the requirements of G.S. 130-166.52 or the dissemination by such supplier of any false or misleading information with respect to remedial actions being undertaken to achieve compliance with the drinking water regulations;
- (3) Refusal by a supplier of water to allow an authorized representative of the Department or any local health department to inspect any public water system as provided for in G.S. 130-204;

- (4) The willful defiling by any person of any water supply of a public water system or the willful damaging of any pipe or other part of a public water system;
- (5) The discharge by any person of sewage or other waste above the intake of a public water system, unless the sewage or waste shall have been passed through a system of purification approved by the Department and the Department of Natural Resources and Community Development; and
- (6) The failure by any person to maintain a system approved by the Department for collecting and disposing of all accumulations of human excrement located on the watershed of any public water system. (1979, c. 788, s. 1.)

§ 130-166.54. Penalties; remedies; contested cases. — (a) The Department may impose an administrative, civil penalty in accordance with the drinking water regulations, on any person who violates G.S. 130-166.52 [130-166.53]. Each day of a continued violation shall constitute a separate violation. Such penalty shall not exceed five thousand dollars (\$5,000) for each day such violation continues.

(b) Any person wishing to contest a penalty or other order issued under this Article shall be entitled to an administrative hearing and judicial review conducted according to the procedures outlined in G.S. 150A-23 through 150A-52.

(c) The Secretary may bring a civil action in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the administrative penalty whenever a supplier of water

- (1) Who has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or
- (2) Who 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.

(d) In addition to any other remedies provided for in this section, the Secretary may institute a civil action in the superior court of the county in which the defendant in said civil action resides to prevent a threatened or continuing violation of any provision of this Article or any order or regulation issued pursuant to this Article. (1979, c. 788, s. 1.)

§ 130-166.55. Powers of the Secretary. — To carry out the provisions and purposes of this Article, the Secretary is authorized and empowered to:

- (1) Administer and enforce the provisions of this Article and all rules, regulations and orders promulgated hereunder;
- (2) Enter into agreements, or cooperative arrangements with, or participate in related programs of other states, other state agencies, federal or interstate agencies, units of local government, educational institutions, local health departments or other organizations or individuals;
- (3) Receive financial and technical assistance from the federal government and other public or private agencies;
- (4) Delegate those responsibilities and duties and designate agents as deemed appropriate for the purpose of administering the requirements of this Article;
- (5) Require public water systems to take such actions or make such modifications as are necessary to comply with the requirements of this Article or the regulations promulgated hereunder;
- (6) Prescribe such policies and procedures as are necessary or appropriate to carry out the Secretary's function under this Article; and
- (7) Collect fees to recover the costs of laboratory analysis as follows:

<i>Type of Analysis</i>	<i>Fee per Analysis</i>
Coliform Bacteria	\$ 5.00
Nitrate	7.00
Inorganic Chemical	100.00
Organic Chemical	120.00
Radiological	
1) surface or ground source serving less than 100,000 in population	50.00
2) surface source serving more than 100,000 in population	120.00
3) Any community water system using water contaminated by manmade radioactivity	200.00

(1979, c. 788, s. 1.)

§ 130-166.56. Construction. — This Article shall be interpreted as giving the State the authority needed to assume primary enforcement responsibility under the federal act. (1979, c. 788, s. 1.)

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 uncleanness of floors, walls, ceilings, storage spaces, toilet and lavatory facilities; and such other items and facilities as are necessary in the interest of public health. (1973, c. 1239, s. 2.)

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

ARTICLE 15A.

Home Health Agencies.

§ 130-170.2. Home health services to be provided in all counties. — (a) Every county shall provide home health services as defined in G.S. 130-170.1(a).

(b) For the purpose of this section, home health services shall be as defined in G.S. 130-170.1(a), except that such services may be provided by any organization listed in subsection (c) of this section.

(c) Home health services may be provided by a county health department, by a district health department, by a home health agency licensed under G.S. 130-170.1, or by a public agency. The county may provide home health services by contract with another health department, or with a home health agency or public agency in another county.

(d) The provisions of this section shall not apply to the counties of Bladen, Hyde, Jones, and Pamlico until January 1, 1980. After December 31, 1979, the provisions of this act shall not apply to Pamlico County as long as it continues to furnish an equivalent home health service to clients as provided by G.S. 130-170.2. (1977, 2nd Sess., c. 1184; 1979, c. 754, s. 1.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1184, s. 3, makes the act effective Jan. 1, 1979.

The 1979 amendment added the second sentence to subsection (d).

ARTICLE 17A.

Cancer Studies.

§§ 130-186.4 to 130-186.8: Reserved for future codification purposes.

ARTICLE 17B.

Arthritis Program.

§ 130-186.9. Establishment of Arthritis Program. — There is hereby established a North Carolina Arthritis Program which shall be administered by the Secretary of Human Resources. The purposes of the comprehensive Arthritis Program shall be:

- (1) To improve professional education for physicians and allied health professionals, including nurses, physical and occupational therapists, and social workers;
- (2) To conduct programs of public education and information;
- (3) To provide detection and treatment programs and services for the at-risk population of North Carolina;
- (4) To utilize the services available at the State medical schools; existing arthritis rehabilitation centers; existing local arthritis clinics and agencies;
- (5) To develop an arthritis outreach clinical system;
- (6) To develop and train personnel at clinical facilities for diagnostic work-up, laboratory analysis, and consultations with primary physicians regarding patient management;
- (7) Arthritis diseases, and;
- (8) To develop the epidemiology studies to determine the frequency and distribution of the disease. (1979, c. 996, s. 2.)

Editor's Note. — Session Laws 1979, c. 996, s. 4, makes this Article effective July 1, 1979.

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 the 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. — Upon receipt of such notice the medical examiner shall take charge of the dead body, make inquiries regarding the cause and manner of death, reduce his findings to writing, and promptly make a full report thereof to the Secretary of Human Resources on forms prescribed for such purpose, retaining one copy of such report for his own, delivering copies to the district solicitor of the superior court, and upon request to a defendant in a criminal action, of any party in a civil action. Full directions as to the nature, character and extent of the investigation to be made in such cases shall be furnished the medical examiner by the Secretary of Human Resources, together with appropriate forms for the required reports and instructions for their use. For each investigation under this Article, including the making of the required reports, the medical examiner shall receive a fee to be paid by the State unless the deceased is a legal resident of the county in which his death occurred, in which event such county shall be responsible for the fee. The fee shall be in an amount determined by the Secretary to be reasonable and appropriate but not to exceed fifty dollars (\$50.00). The medical examiner is authorized to issue subpoenas for any person or persons to appear during the investigation. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1145.)

Editor's Note. —

The 1977, 2nd Sess., amendment deleted "of twenty-five dollars (\$25.00)," following "fee" in the third sentence and added the fourth sentence.

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 pathological 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 22.

Remedies.

§ 130-203. Penalties.

Cross Reference. — For provision that this section shall be inapplicable to Article 13B of this Chapter, see § 130-166.21F.

§ 130-205. Injunction. — If any person shall violate the provisions of this Chapter or any rules and regulations adopted pursuant thereto, or if any person shall hinder or interfere with the proper performance of duty of the Secretary of Human Resources or his representative or any local health director or his representative, the Secretary of Human Resources or any local health director may institute an action in the superior court of the county in which such violation, hindrance or interference occurred for injunctive relief against such continued violation, hindrance or interference, irrespective of all other remedies at law, and upon the institution of such an action, the procedure shall be in accordance with the provisions of Article 37 of Chapter 1 of the General Statutes, and Rule 65 of the Rules of Civil Procedure. (1957, c. 1357, s. 1; 1967, c. 954, s. 3; 1973, c. 476, s. 128; 1979, c. 788, s. 5.)

Cross Reference. — For provision that this section shall be inapplicable to Article 13B of this Chapter, see § 130-166.21F.

Editor's Note. —

The 1979 amendment deleted "or threaten to violate" after "shall violate" and "and such violation, if continued, or such threatened violation, if committed, is or may be dangerous

to the public health" after "pursuant thereto" near the beginning of the section; and deleted "and such hindrance or interference is or may be dangerous to the public health" after "local health director or his representative", and "threatened violation", in two places, near the middle of the section.

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.

(b) 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.

For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

Session Laws 1977, c. 897, s. 4, as amended by Session Laws 1977, 2nd Sess., c. 1192, s. 2, 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.)

§ 130-266.1. Peer review. — It is not a violation of G.S. 130-266(5) for medical records to be disclosed to a private peer review committee if:

- (1) The peer review committee has been approved by the Division of Facilities Services of the Department of Human Resources;
- (2) The purposes of the peer review committee are to:
 - a. Survey facilities to verify a high level of quality care through evaluation and peer assistance;
 - b. Resolve written complaints in a responsible and professional manner; and
 - c. Develop a basic core of knowledge and standards useful in establishing a means of measuring quality of care; and
- (3) The peer review committee keeps such records confidential. (1979, c. 707.)

§ 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.)

§§ 130-278 to 130-282: Reserved for future codification purposes.

ARTICLE 31.

Glaucoma and Diabetes Program.

§ 130-283. Department of Human Resources to establish program. — The Department of Human Resources, hereinafter referred to as Department, shall establish a program for the detection and control of glaucoma and diabetes which would complement and assist existing community resources. This program shall emphasize detection and control among high risk groups. This program shall also assist those persons who are unable to pay for such services, but will not duplicate payment by other existing programs. (1977, 2nd Sess., c. 1257, s. 1.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1257, s. 3, makes the act effective July 1, 1978.

§ 130-284. Powers and duties of the Department. — The Department shall:

- (1) Provide for education of health care personnel and patients in the detection, control and treatment of glaucoma and diabetes;
- (2) Develop and expand programs for the detection and control of glaucoma and diabetes including insuring uniform high quality of public clinical services, examinations, treatment, laboratory services, follow-up and evaluation services, and educational services;
- (3) Provide supplies, equipment, and medication for detection and control of glaucoma and diabetes;
- (4) Cooperate with and accept assistance from any group or organization for the accomplishment of the purposes of this Article. (1977, 2nd Sess., c. 1257, s. 1.)

§ 130-285. Rules and regulations. — The Department of Human Resources shall develop and adopt policies to implement the provisions of this Article. (1977, 2nd Sess., c. 1257, s. 1.)

Chapter 131.

Public Hospitals.

Article 1.

Orthopedic Hospital.

Sec.

131-3. Establishment of school.

Article 7.

McCain Hospital.

131-53.1. Treatment of related diseases.

131-54. Indigent patients; recovery of charges from those able to pay.

131-56. [Repealed.]

131-58. Department of Human Resources may receive gifts for hospital.

131-60.1 to 131-60.5. [Reserved.]

Article 7A.

North Carolina Specialty Hospitals.

131-60.6. Control of certain hospitals transferred to Department of Human Resources; power of Secretary to regulate.

Article 8.

Western North Carolina Hospital.

131-61.1. Treatment and control of patients.

131-72. Gifts and grants from governments or agencies; bond issues.

131-73. State Treasurer as treasurer of hospital.

131-74. Gifts and donations for benefit of hospital.

Article 9.

Eastern North Carolina Hospital.

131-76. Establishment of Eastern North Carolina Hospital.

131-77. Control of hospital by Department of Human Resources.

131-78.1. [Repealed.]

131-80. State Treasurer to act as ex officio treasurer of hospital.

131-81. Gifts and donations.

Article 9A.

Gravely Hospital.

131-82.1. [Repealed.]

Article 10.

Funds of Deceased Inmates.

131-83. Applied to debts due by such inmates to such hospitals or institutions.

Article 11.

Sanatorium for Tubercular Prisoners.

Sec.

131-84 to 131-89. [Repealed.]

Article 12.

Hospital Authorities Law.

131-98. Power of authority.

131-110. Tax exemptions.

Article 13.

Department of Human Resources and Program of Hospital Care.

131-120. Construction and enlargement of local hospitals.

131-121. Medical and other students; loan fund.

131-124. Medical training for Negroes.

Article 13A.

Hospital Licensing Act.

131-126.3. Licensure.

131-126.5. Issuance and renewal of license.

131-126.6. Denial or revocation of license; hearings and review.

131-126.9. Inspections and consultations.

131-126.12. Information to be disclosed.

131-126.14. Judicial review.

Article 13B.

Additional Authority of Subdivisions of Government to Finance Hospital Facilities.

131-126.25. Federal and State aid.

Article 13C.

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

131-126.31. Petition for formation of hospital district; hearing.

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

Article 14.

Cerebral Palsy Hospital.

131-127. Creation of hospital; powers.

131-132. Appointment and discharge of superintendent; qualifications and compensation.

131-133. Aims of hospital; application for admission.

Article 16.

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

Sec.

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

Article 17.

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131-168. Definitions.

131-169. Limited liability.

131-170 to 131-174. [Reserved.]

Article 18.

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131-175. Findings of fact.

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and Development Agency; powers
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need; rules of Department.

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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.**

Constitutionality. — The statutory scheme set forth in this Article is a constitutional delegation of authority for a board of county commissioners to assume the role of "governing body" for the purpose of implementing that enabling legislation, including the levying of a tax to support a township hospital. Arnold v. Varum, 34 N.C. App. 22, 237 S.E.2d 272 (1977).

This Article is clearly a general law. Arnold v. Varum, 34 N.C. App. 22, 237 S.E.2d 272 (1977).

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).

§ 131-7. Trustees; term of office; qualification and election.

Local Modification. — Johnston: 1977, 2nd Sess., c. 1151.

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.

Article Conditionally Repealed Effective July 1, 1980. — Session Laws 1979, c. 838, s. 45, provides: "If the Board of Directors of the North Carolina Specialty Hospitals is not reestablished

under the provisions of Chapter 712 of the 1977 Session Laws, then effective July 1, 1980, Articles 7, 8 and 9 of Chapter 131 of the General Statutes are repealed."

§ 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."

§§ 131-60.1 to 131-60.5: Reserved for future codification purposes.

ARTICLE 7A.

North Carolina Specialty Hospitals.

§ 131-60.6. Control of certain hospitals transferred to Department of Human Resources; power of Secretary to regulate. — All functions, powers, duties, and obligations heretofore vested in the Board of Directors of the North Carolina Specialty Hospitals and in McCain Hospital, Western North Carolina Hospital and Eastern North Carolina Hospital are hereby transferred to and vested in the Department of Human Resources. All appropriations heretofore made to such Board of Directors or to any of the hospitals are hereby transferred to the Department of Human Resources. The Secretary of the Department of Human Resources shall have the power and duty to adopt rules and regulations for the operation of these facilities. Any change in the Alcohol Detoxification Program at Black Mountain must be recommended by the Secretary of the Department of Human Resources and approved by the Governor and the Advisory Budget Commission. (1979, c. 838, s. 46.)

Editor's Note. — The enacting clause of Session Laws 1979, c. 838, s. 46, provides: "If the Board of Directors of the North Carolina Specialty Hospitals is not reestablished under the provisions of Chapter 712 of the 1977 Session

Laws, then effective July 1, 1980, Chapter 131 of the General Statutes is amended by adding a new Article 7A"

Session Laws 1979, c. 838, s. 122, contains a severability clause.

ARTICLE 8.

Western North Carolina Hospital.

Article Conditionally Repealed Effective July 1, 1980. — Session Laws 1979, c. 838, s. 45, provides: "If the Board of Directors of the North Carolina Specialty Hospitals is not reestablished

under the provisions of Chapter 712 of the 1977 Session Laws, then effective July 1, 1980, Articles 7, 8 and 9 of Chapter 131 of the General Statutes are repealed."

§ 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.

Article Conditionally Repealed Effective July 1, 1980. — Session Laws 1979, c. 838, s. 45, provides: "If the Board of Directors of the North Carolina Specialty Hospitals is not reestablished

under the provisions of Chapter 712 of the 1977 Session Laws, then effective July 1, 1980, Articles 7, 8 and 9 of Chapter 131 of the General Statutes are repealed."

§ 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."

Section 131-62, referred to in this section, has been repealed. As to the Department of Human Resources, see § 143B-136 et seq.

§ 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.

(c) Repealed by Session Laws 1979, c. 504, s. 8.

(d) The Department of Human Resources shall be fully authorized and empowered to do all such acts and things as may be necessary, to authorize the State of North Carolina to receive the full benefits of any federal laws which are

or may be enacted for the construction and maintenance of hospitals, health centers or allied facilities.

(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; 1979, c. 504, s. 14.)

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.

The 1979 amendment repealed subsection (c), which authorized and established the Hospital

Advisory Council, and deleted "and the said State Advisory Council set up by the Governor as herein authorized" after "Resources" near the beginning of subsection (d).

As the rest of the section was not changed by the amendment, it 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 to be disclosed. — Information received by the North Carolina Medical Care Commission and the Department of Human Resources through filed reports, license applications, or inspections that are required or authorized by the provisions of this Article, may be disclosed publicly except where such disclosure would violate the confidential relationship existing between physician and patient. The Department is authorized to adopt rules and regulations to enforce the provisions of this Article. (1979, c. 207, 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.

The 1979 amendment substituted everything following "through filed reports" for

"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."

§ 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 Children's Hospital" for "The

Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina.'"

§ 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.)

§§ 131-170 to 131-174: Reserved for future codification purposes.

ARTICLE 18.

Certificate of Need Law.

§ 131-175. Findings of fact. — The General Assembly of North Carolina makes the following findings:

- (1) That, because of the manner in which health care is financed, the forces of free market competition are largely absent and that government regulation is therefore necessary to control the cost, utilization, and distribution of health services.
- (2) That the continuously increasing cost of health care services threatens the health and welfare of the citizens of this State in that citizens need assurance of economical, and readily available health care.
- (3) That the current system of planning for health care facilities and equipment has led to the proliferation of new inpatient acute care facilities and medical equipment beyond the need of many localities in this State and an inadequate supply of health personnel and of resources for long term, intermediate, and ambulatory care in many localities.
- (4) That this trend of proliferation of unnecessary health care facilities and equipment results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of acute care hospital services by physicians.
- (5) That a certificate of need law is required by P.L. 93-641 as a condition for receipt of federal funds. If these funds were withdrawn the State of North Carolina would lose in excess of fifty-five million dollars (\$55,000,000).
- (6) That excess capacity of health facilities places an enormous economic burden on the public who pay for the construction and operation of these facilities as patients, health insurance subscribers, health plan contributors, and taxpayers.
- (7) That the general welfare and protection of lives, health, and property of the people of this State require that new institutional health services to be offered within this State be subject to review and evaluation as to type, level, quality of care, feasibility, and other criteria as determined by provisions of this Article or by the North Carolina Department of Human Resources pursuant to provisions of this Article prior to such services being offered or developed in order that only appropriate and needed institutional health services are made available in the area to be served. (1977, 2nd Sess., c. 1182, s. 2.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1182, s. 4, makes the act effective Jan. 1, 1979, and further provides:

"This act shall not apply to any project which has received approval under the Section 1122,

P.L. 92-603 program prior to January 1, 1979, as long as construction has commenced before January 1, 1980.

"This act shall not apply to any project for which application is made under the Section

1122, P.L. 92-603 program between July 1, 1978, and January 1, 1979, if such application is approved, and construction has commenced before January 1, 1980.

"Rules and Regulations under this act may be issued at any time after the date of ratification of this act [June 16, 1978], but shall not become effective prior to January 1, 1979."

Session Laws 1977, 2nd Sess., c. 1182, s. 1, provides: "This act may be cited as the North Carolina Health Planning and Resource Development Act of 1978."

Session Laws 1977, 2nd Sess., c. 1182, s. 3, contains a severability clause.

Certificate of Need Not Required of New Institutional Health Services. — If work has

commenced, but not completed by January 1, 1979, on a "New Institutional Health Service" proposal and the proposal has not received approval under Section 1122 of the Social Security Act, 42 U.S.C.A. 1320a-1, the person is not required to obtain a certificate of need pursuant to Chapter 1182, 1977 Session Laws (Second Session, 1978), (to be codified at G.S. 131-170 et seq.) before proceeding further with work on the proposal if prior to ratification of the act he has proceeded with development of the New Institutional Health Services. See opinion of Attorney General to Mr. Charles W. Houseworth, Jr., Health Planner, State Health Planning and Development Agency, Department of Human Resources, 48 N.C.A.G. 1 (1978).

§ 131-176. Definitions. — As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "Ambulatory surgical facility" means a public or private facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. Such term does not include the offices of private physicians or dentists, whether for individual or group practice.
- (2) "Bed capacity" means space used exclusively for inpatient care, including space designed or remodeled for licensed inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate square footage is provided as established by regulations of the Department except that single beds in single rooms are counted even if the room contains inadequate square footage.
- (3) "Certificate of need" means a written order of the Department setting forth the affirmative finding that a proposed project sufficiently satisfies the plans, standards, and criteria prescribed for such projects by this Article and by rules and regulations of the Department as provided in G.S. 131-181(a) and which affords the person so designated as the legal proponent of the proposed project the opportunity to proceed with the development of such project.
- (4) "Certified cost estimate" means an estimate of the total cost of a project certified by the proponent of the project within 60 days prior to or subsequent to the date of submission of the proposed new institutional health service to the Department and which is based on:
 - a. Preliminary plans and specifications,
 - b. Estimates of the cost of equipment certified by the manufacturer or vendor, and
 - c. Estimates of the cost of management and administration of the project.
- (5) "Change of ownership" means the transfer by purchase, lease or comparable arrangements of the controlling interest of a capital asset or capital stock, or voting rights of a corporation, from one person to another. Such transfer is deemed to occur when fifty percent (50%) or more of an existing capital asset or capital stock or voting rights of a corporation is purchased, leased or acquired by comparable arrangement by one person from another person.
- (6) "Commencement of construction" means that all of the following have been completed with respect to a project:
 - a. A written contract executed between the applicant and a licensed contractor to construct and complete the project within a designated time schedule in accordance with final architectural plans;

- b. Required initial permits and approvals for commencing work on the project have been issued by responsible governmental agencies; and
 - c. Actual construction work on the project has started and a progress payment has been made by the applicant to the licensed contractor under terms of the construction contract.
- (7) "Department" means the North Carolina Department of Human Resources.
- (8) To "develop" when used in connection with health services, means to undertake those activities which will result in the offering of institutional health service not provided in the previous 12-month reporting period or the incurring of a financial obligation in relation to the offering of such a service.
- (9) "Final decision" means an approval, a denial, an approval with conditions, or a deferral.
- (10) "Health care facility" means hospitals; psychiatric hospitals; tuberculosis hospitals; skilled nursing facilities; kidney disease treatment centers, including free-standing hemodialysis units; intermediate care facilities; ambulatory surgical facilities; health maintenance organizations; home health agencies; and diagnostic or therapeutic equipment with a value in excess of one hundred fifty thousand dollars (\$150,000) purchased or leased by a "person," as defined in this section. "Health care facility" does not include a facility operated solely as part of the private medical practice of (i) an independent practitioner, (ii) a partnership, or (iii) a professional medical corporation, except with respect to acquisitions of diagnostic or therapeutic equipment with a value in excess of one hundred fifty thousand dollars (\$150,000) if with respect to such acquisition either:
- a. The notice required by G.S. 131-178(e) is not filed in accordance with that paragraph with respect to such acquisition, or
 - b. The Department finds, within 30 days after the date it receives a notice in accordance with G.S. 131-178(e) with respect to such acquisition, that the equipment will be used to provide services for inpatients of a hospital.
- (11) "Health maintenance organization (HMO)" means a public or private organization which:
- a. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;
 - b. Is compensated, except for copayments, for the provision of the basic health care services listed in paragraph a of this subdivision to enrolled participants on a predetermined periodic rate basis; and
 - c. Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individuals physicians or one or more groups of physicians organized on a group practice or individual practice basis.
- (12) "Health systems agency" means an agency, as defined by P.L. 93-641, as amended, and rules and regulations implementing that act.
- (13) "Home health agencies" means a private organization or public agency, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.
- "Home health services" means items and services furnished to an individual by a home health agency, or by others under arrangements with such others made by the agency, on a visiting basis, and except for

paragraph e of this subdivision, in a place of temporary or permanent residence used as the individual's home as follows:

- a. Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
- b. Physical, occupational or speech therapy;
- c. Medical social services, home health aid services, and other therapeutic services;
- d. Medical supplies, other than drugs and biologicals, and the use of medical appliances;
- e. Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency at a hospital or nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in his home, or which are furnished at such facility while he is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

(14) "Hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term does not include psychiatric hospitals, as defined in subdivision (22) of this section, or tuberculosis hospitals, as defined in subdivision (27) of this section.

(15) To "incur a financial obligation in relation to the offering of a new institutional health service" means that in establishing a new institutional health service a person must fulfill the following performance requirements relative to but not limited to the following types of projects:

a. New construction or renovation project:

1. Has acquired title or long-term lease to the appropriate site; and
2. Has entered into an enforceable construction contract specifying price and date for commencement of construction within 120 days from the date the contract is entered into; and
3. Has filed with the appropriate State agency and received approval on the complete set of schematic drawings for the project; and
4. Has obtained a financial commitment, including an enforceable offer and acceptance from a financial institution to provide adequate capital financing for the project.

b. Acquisition of equipment: The equipment must either be purchased, [or] the lease agreement must be entered into by the proponent, or if acquired by a comparable arrangement the proponent must have possession of the equipment;

c. Change of ownership by lease or purchase or comparable arrangement:

1. The lease must be entered into; or
2. The title to the property or stock must be in the possession of the proponent.

(16) "Intermediate care facility" means a public or private institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health-related care and services above the level of room and board.

(17) "New institutional health services" means:

- a. The construction, development, or other establishment of a new health care facility;
- b. Any expenditure by or on behalf of a health care facility in excess of one hundred fifty thousand dollars (\$150,000) which, under generally accepted accounting principles consistently applied, is a capital expenditure; except that this Article shall not apply to expenditures solely for the termination or reduction of beds or of a health service, but shall apply to expenditures for site acquisitions and acquisition of existing health care facilities. Where a person makes an acquisition by or on behalf of a health care facility under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be deemed a capital expenditure subject to review. The value of the transaction shall be deemed to be the fair market value of the asset and not necessarily the actual dollar amount of the transaction. Donations shall include bequests. A change in a proposed capital expenditure project which in itself meets the criteria set forth herein shall be considered a capital expenditure, as well as a change in ownership of in excess of fifty percent (50%) of an existing health care facility or the acquisition of in excess of fifty percent (50%) of the assets or capital stock of a health care facility;
- c. A change in bed capacity of a health care facility which increases the total number of beds, or which distributes beds among various categories, subject to the provisions of paragraph j of this subdivision, or relocates such beds from one physical facility or site to another. Such bed capacity change is subject to review regardless of whether a capital expenditure is made;
- d. Health services, including home health services, which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered;
- e. A formal internal commitment of funds by a facility for a project undertaken by the facility as its own contractor;
- f. Any expenditure by or on behalf of a health care facility in excess of one hundred fifty thousand dollars (\$150,000) made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of a new institutional health service;
- g. Any conversion or upgrading of a facility such that it is converted from a type of facility not covered by this Article to any of the types of health care facilities which are covered by this Article as defined in this section;
- h. A project which substantially expands a service currently offered or which provides a service not offered in the previous 12-month reporting period by the facility, including a change in type of license of five or more beds, subject to the provisions of paragraph j of this subdivision. Such substantial change of service is subject to review regardless of whether a capital expenditure is made;
- i. The purchase or lease by a person or health care facility of diagnostic or therapeutic equipment, regardless of location, with a value in excess of one hundred fifty thousand dollars (\$150,000), except it shall not include purchase or lease of such equipment with a value in excess of one hundred fifty thousand dollars (\$150,000) for use in a facility operated solely as part of the private medical practice

of (i) an independent practitioner, (ii) a partnership, or (iii) a professional medical corporation unless either,

1. The notice required by G.S. 131-178(e) is not filed in accordance with that subsection, or
 2. The Department finds, within 30 days after it receives a notice under G.S. 131-178(e), that the equipment will be used to provide services for inpatients of a hospital;
- j. The Department of Human Resources is authorized and empowered to adopt rules and regulations, consistent with P.L. 93-641, and federal rules and regulations adopted pursuant to said P.L. 93-641, to permit the interchange of skilled nursing and intermediate care beds within the same health care facility to the maximum degree, extent or number permitted from time to time by said federal rules and regulations without requiring a new certificate of need.

For purposes of this subdivision, the acquisition of one or more items of functionally related diagnostic or therapeutic equipment shall be considered as one project. Purchase or lease shall include purchases, contracts, encumbrances of funds, lease arrangements, conditional sales or a comparable arrangement that purports to be a transfer of ownership in whole or in part. Diagnostic or therapeutic equipment shall include units of equipment and all accessories functionally related and used in the diagnosis and treatment of patients, excluding mechanical and electrical equipment related to basic operation and maintenance of the facility. Functionally related means that pieces of equipment are interdependent to the extent that one piece of equipment is unable to function in the absence of or without the functioning piece, or that one piece of equipment performs the same function as another piece, or that pieces of equipment are normally used together in the provision of a single health care facility service.

- (18) "North Carolina State Health Coordinating Council" means the Council as defined by P.L. 93-641, as amended, and rules and regulations implementing that act.
- (19) To "offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.
- (20) "Person" means an individual, a trust or estate, a partnership, a corporation, including associations, joint stock companies, and insurance companies; the State, or a political subdivision or agency or instrumentality of the State.
- (21) "Project" or "capital expenditure project" means a proposal to undertake a capital expenditure that results in the offering of a new institutional health service as defined by this Article. A project, or capital expenditure project, or proposed project may refer to the project from its earliest planning stages up through the point at which the specified new institutional health service may be offered. In the case of facility construction, the point at which the new institutional health service may be offered must take place after the facility is capable of being fully licensed and operated for its intended use, and at that time it shall be considered a health care facility.
- (22) "Psychiatric hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.
- (23) "Skilled nursing facility" means a public or private institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

- (24) "State Health Plan" means the plan required by P.L. 93-641, as amended, and rules and regulations implementing that act.
- (25) "State Medical Facilities Plan" means a plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council, as required by P.L. 93-641, as amended, and rules and regulations implementing that act.
- (26) "State Mental Health Plan" means the plan prepared by the Department of Human Resources under P.L. 94-63 for the purposes of providing an inventory of existing mental health and mental retardation services, and of establishing priorities for the development of new services to adequately meet the identified needs.
- (27) "Tuberculosis hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.
- (28) "Undertake," with reference to a project or capital expenditure project, means:
- a. Constructing, remodeling, installing, or proceeding with a project or any part of a project which exceeds one hundred fifty thousand dollars (\$150,000) in the current fiscal year or can exceed a total of one hundred fifty thousand dollars (\$150,000) in three consecutive fiscal years;
 - b. The expenditure or commitment of funds, which exceeds one hundred fifty thousand dollars (\$150,000) in the current fiscal year or can exceed a total of one hundred fifty thousand dollars (\$150,000) in three subsequent fiscal years, for a project which shall include but not be limited to:
 1. Construction and financing of the project;
 2. Equipment orders, purchases, leases or acquisition through other comparable arrangements or donations;
 3. Development of studies, surveys, reports, working drawings, plans and specifications;
 4. Acquisitions, purchases, leases, or contracts for necessary developmental services respecting an existing or proposed health facility;
 5. Promotion, sponsorship, solicitation or representation or holding out to the public for donations or a fund raising drive for a specified project;
 6. Obtaining or securing bonds for a specified project;
 7. Executing contracts for the project;
 8. Cost of legal fees.
 - c. The expenditure or commitment of funds to develop applications, studies, reports, schematics, long-range planning or preliminary plans and specifications certified to cost one hundred fifty thousand dollars (\$150,000) or less shall not be considered to be the undertaking of a project. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-177. Department of Human Resources is designated State Health Planning and Development Agency; powers and duties. — The Department of Human Resources is designated as the State Health Planning and Development Agency for the State of North Carolina, and is empowered to fulfill responsibilities defined in P.L. 93-641.

The department shall exercise the following powers and duties:

- (1) To establish standards and criteria or plans required to carry out the provisions and purposes of this Article and to adopt rules and regulations pursuant to Chapter 150A;

- (2) Adopt, amend, and repeal such rules and regulations, consistent with the laws of this State, as may be required by the federal government for grants-in-aid for health care facilities and health planning which may be made available by the federal government. This section shall be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;
- (3) Define, by regulation, procedures for submission of periodic reports by persons or health facilities subject to agency review under this Article;
- (4) Develop policy, criteria, and standards for health care facilities planning, conduct statewide inventories of and make determinations of need for health care facilities, and develop a State plan coordinated with other plans of health systems agencies with other pertinent plans and with the State health plan of the Department;
- (5) Implement, by regulation, criteria for project review;
- (6) Have the power to grant, deny, suspend, or revoke a certificate of need;
- (7) Solicit, accept, hold and administer on behalf of the State any grants or bequests of money, securities or property to the Department for use by the Department or health systems agencies in the administration of this Article;
- (8) Develop procedures for appeals of decisions to approve or deny a certificate of need, as provided by G.S. 131-185;
- (9) The Secretary of Human Resources shall have final decision-making authority with regard to all functions described in this section. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-178. Services and facilities requiring certificates of need. — (a) No person shall undertake new institutional health services or health care facilities without first having obtained a certificate of need as provided by this Article.

(b) Projects subject to certificate of need review shall include "new institutional health services" as defined by this Article. A health maintenance organization is subject to review only when new institutional health services are offered in hospitals controlled directly or indirectly by health maintenance organizations. A health maintenance organization is also subject to review when diagnostic or therapeutic equipment is purchased by a health maintenance organization or hospital controlled by a health maintenance organization under circumstances defined by G.S. 131-176(10) or 131-176(17).

(c) Where the estimated cost of a proposed project is certified by a licensed architect or engineer to be one hundred fifty thousand dollars (\$150,000) or less, such expenditures shall be deemed not to exceed one hundred fifty thousand dollars (\$150,000) and shall not require review as a capital expenditure regardless of the actual cost of the project, provided that the following conditions are met:

- (1) The estimated cost is certified to the Department within 60 days of the date of submission of the project upon which the obligation for such expenditure is incurred. Such certified cost estimates shall be available for inspection at the facility and sent to the Department upon its request.
- (2) The facility on whose behalf the expenditure was made notifies the Department in writing within 30 days of the date on which such expenditure is made, if such expenditure exceeded one hundred fifty thousand dollars (\$150,000). Such notice shall include a copy of a certified cost estimate.
- (d) The Department may grant a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of a new institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation

for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications. Such expenditures shall also include those for site acquisition and preliminary plans, studies, and surveys.

(e) Before any person enters into a contractual arrangement to acquire diagnostic or therapeutic equipment with a value in excess of one hundred fifty thousand dollars (\$150,000), which will not be owned by or located in a health care facility, such person shall notify the Department of such person's intent to acquire such equipment. Such notice shall be made in writing on such form as the Department shall prescribe and shall be made at least 30 days before contractual arrangements are entered into to acquire the equipment with respect to which the notice is given. For the purposes of this subsection, health care facility does not include a facility operated solely as part of the private medical practice of (i) an independent practitioner, (ii) a partnership, or (iii) a professional medical corporation.

(f) Any local health department under Article 3 of Chapter 130 of the General Statutes which provides a new institutional health service as defined in G.S. 131-176(17) is subject to the provisions of this Article. (1977, 2nd Sess., c. 1182, s. 2; 1979, c. 876, s. 2.)

Cross Reference. — As to health maintenance organizations, see Chapter 57B.

Editor's Note. — The 1979 amendment, effective July 1, 1979, added the second and third sentences of subsection (b).

§ 131-179. Nature and incidents of certificate of need; rules of Department.

— (a) A certificate of need shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferable or assignable nor shall a project or capital expenditure project be transferred from one person to another. A certificate of need shall be valid for the period of time specified therein.

(b) A certificate of need shall be issued for a 12-month period, or such other lesser period as specified by the Department, effective on the date of the Department's action. Within the effective period, the legal proponent of the proposed project must perform on the project by fulfilling the specific performance requirements set forth by this Article for incurring a financial obligation in relation to the offering of a new institutional health service.

(c) By regulation, the Department may define the extent, not to exceed six months, for which a certificate of need may be renewed, provided the applicant by petition makes a good faith showing that, within a reasonable time, he will complete the establishment, construction, or modification of the health care facility, and that he will incur the financial obligation within the extended approval period.

(d) The Department shall adopt rules pertaining to the requirement of filing for a certificate of need based on a change of ownership of a health care facility. Any substantial change as to the person who or the partnership which is the operator of a health care facility shall be subject to approval by the Department, provided, this provision will not interfere with the authority of the owner of a health care facility to make any change in employment of any administrator who holds a valid license issued by the North Carolina Department of Human Resources. The Department shall adopt rules which shall state, at a minimum, that any transfer, assignment or other disposition or change of ownership or control of fifty percent (50%) or more of the capital stock or voting rights thereunder of a corporation which is the operator of a health care facility in the State, or any transfer, assignment, or other disposition of the stock or voting

rights thereunder of such corporation which results in the ownership or control of more than fifty percent (50%) of the stock or voting rights thereunder of such corporation by any person shall be subject to approval by the Department in accordance with procedures for filing a certificate of need application. In the absence of such approval, the enforcement provisions of G.S. 131-187 may be invoked. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-180. Application. — All persons or health care facilities subject to review, as defined in G.S. 131-176 must file an application for a certificate of need with the Department. An application for a certificate of need shall be made on the forms provided by the Department. This application shall contain such information as the Department, by regulation, deems necessary to conduct the review. Such application shall include affirmative evidence on which the Department shall make the findings required under this Article, and upon which the Department shall make its final decision on the application. (1977, 2nd Sess., c. 1182, s. 2.)

Cross Reference. — As to licensing of ambulatory surgical facilities, see § 131B-1 et seq.

§ 131-181. Review criteria. — (a) The Department shall promulgate rules implementing criteria outlined in this subsection to determine whether an applicant is to be issued a certificate for the proposed project. Criteria so implemented are to be consistent with federal law and regulations and shall cover:

- (1) The relationship of the proposed project to the State Medical Facilities Plan, the State Health Plan, and the State Mental Health Plan.
- (2) The relationship of services reviewed to the long-range development plan of the persons providing or proposing such services.
- (3) The need that the population served or to be served by such services has for such services.
- (4) The availability of less costly or more effective alternative methods of providing such services.
- (5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services.
- (6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.
- (7) The availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services.
- (8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.
- (9) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.
- (10) The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include

the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health service from the existing providers in the area that are not health maintenance organizations.

- (11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.
- (12) In the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project.
- (13) The need that the medically underserved portion of the population, especially those people located in rural or economically depressed areas, has for such services, and the extent to which the project under review proposes to meet that need.

(b) Criteria adopted for reviews in accordance with subsection (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-182. Review process. — (a) Except as provided in subsection (c) of this section there shall be a time limit of 90 days for review of the project beginning on the day the department declares the application “complete for review,” as established by departmental regulations.

- (1) The appropriate Health Systems Agency shall review each application for a certificate of need in accord with its adopted plans, standards, criteria, and procedures, and shall submit its comments thereon to the Department within 60 days after receipt of a complete application by the Department. The comments may include a recommendation to approve the application, to approve the application with conditions, to defer the application, or to deny the application. Suggested modifications, if any, shall relate directly to the project under review.
- (2) The appropriate Health Systems Agency shall, during the course of its review, provide an opportunity for a public meeting at which interested persons may introduce testimony and exhibits.
- (3) Any person may file written comments and exhibits concerning a proposal under review with the appropriate Health Systems Agency and the Department.

(b) The Department shall issue as provided in this Article a certificate of need with or without conditions or reject the application within the review period. If the Department fails to act within such period, the failure to act shall constitute denial of the application.

(c) The Department shall promulgate rules establishing criteria for determining when it would not be practicable to complete a review within 90 days from receipt of a completed application. If the Department finds that these criteria are met for a particular project, it may extend the review period for a period not to exceed 60 days and provide notice of such extension to all affected persons. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-183. Final decision. — The Department shall send its decision along with written findings to the person proposing the new institutional health service

and to the Health Systems Agency for the health service area in which the new service is proposed to be offered or developed. In the case of a final decision to "approve" or "approve with conditions" a proposal for a new institutional health service, the Department shall issue a certificate of need to the person proposing the new institutional health service. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-184. Written notice of decision. — The Department shall, within 15 days after it makes a final decision on an application, provide in writing to the applicant, to the appropriate Health Systems Agency and, upon request to affected persons, the findings and conclusions on which it based its decision, including but not limited to the criteria used by the Department in making such decision. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-185. Rights of appeal and judicial review. — (a) In fulfilling the functions and duties of this Article the Department shall comply with the North Carolina Administrative Procedure Act, Chapter 150A.

(b) Any proponent of a new institutional health service or capital expenditure project or any person who qualifies as a "party" or "person aggrieved" under G.S. 150A-2 shall have all the rights of appeal and judicial review available under Articles 3 and 4 of Chapter 150A.

(c) In the instance that the Department makes a recommendation on review of a project which is inconsistent with a recommendation made by a particular Health Systems Agency, the Department shall submit a written, detailed statement of the reasons for the inconsistency. The Health Systems Agency may request an appeal under the North Carolina Administrative Procedure Act, Chapter 150A. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-186. Forfeiture of certificate of need. — The Department may revoke a certificate of need, for failure to perform on the certificate of need, based on rules adopted by the Department. The Department may revoke a certificate of need for, including but not necessarily limited to, the following reasons:

- (1) For failure to satisfy within 180 days following issuance of the certificate of need any performance requirements that may be set forth by the Department.
- (2) After review, upon 12 months' duration of approval, for failure to incur the financial obligation for a capital expenditure as defined in this Article.
- (3) After notice and a fair hearing on proof that a person who has been awarded a certificate of need, and who before completion of the project and operation of the facility, has attempted to or has transferred or conveyed more than five percent (5%) ownership or control in a facility without prior written approval of the Department. Transfers resulting from personal illness or other good cause, as determined by the Department, may be exempt from this provision based on rules adopted by the Department. Transfers resulting from death shall be exempt from this provision. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-187. Enforcement and sanctions. — (a) Only those new institutional health services which are found by the Department to be needed as provided in this Article and granted certificates of need shall be offered or developed within the State.

(b) No expenditures in excess of one hundred fifty thousand dollars (\$150,000) in preparation for the offering or development of a new institutional health service shall be made by any person unless a certificate of need for such service or activities has been granted, except as otherwise provided in G.S. 131-178.

(c) No formal commitments made for financing, construction, or acquisition regarding the offering or development of a new institutional health service shall be made by any person unless a certificate of need for such service or activities has been granted.

(d) Nothing in this Article shall be construed as terminating the P.L. 92-603, Section 1122 capital expenditure program or the contract between the State of North Carolina and the United States under that program. The sanctions available under that program and contract, with regard to the determination of whether the amounts attributable to an applicable project or capital expenditure project should be included or excluded in determining payments to the proponent under Titles V, XVIII, and XIX of the Social Security Act, shall remain available to the State.

(e) If any health care facility proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the penalty for such violation of this Article and rules and regulations hereunder is the withholding of federal and State funds under Titles V, XVIII, and XIX of the Social Security Act for reimbursement of capital and operating expenses related to the provision of the new institutional health service.

(f) If any health care facility proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the licensure for such facility may be revoked or suspended by the Medical Care Commission, or the Commission for Health Services, as appropriate.

(g) A civil penalty of not more than twenty thousand dollars (\$20,000) may be assessed by the Department against any person who knowingly offers or develops any new institutional health service within the meaning of this Article without a certificate of need issued under this Article and the rules and regulations pertaining thereto, or in violation of the terms of such a certificate. In determining the amount of the penalty the Department shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. The Department may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Department may specify, the Department may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Department, in the superior court of the county in which the person assessed has its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Department's action (which shall include a review of the amount of the assessment), shall be as provided in Chapter 150A of the General Statutes. For the purpose of this subsection, the word "person" shall not include an individual in his capacity as an officer, director, or employee of a person as otherwise defined in this Article.

(h) No agency of the State or any of its political subdivisions may appropriate or grant funds or financially assist in any way a person, applicant, or facility which is or whose project is in violation of this Article.

(i) If any health care facility proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the Secretary of Human Resources or any person aggrieved, as defined by G.S. 150A-2(6) may bring a civil action for injunctive relief, temporary or permanent, against the person offering, developing or operating any new institutional health service. (1977, 2nd Sess., c. 1182, s. 2.)

§ 131-188. **Venue.** — (a) Any action brought by a “person aggrieved,” as defined by G.S. 150A-2(6), to enforce the provisions of this Article against any health care facility, as defined in G.S. 131-176(10) or its agents or employees, may be brought in the superior court of any county in which the cause of action arose or in the county in which the health care facility is located, or in Wake County.

(b) An action brought by a “party,” as defined by G.S. 150A-2(5), who has exhausted all administrative remedies made available to that party by statute or rules and regulations, may be brought in the Superior Court of Wake County at any time after a final decision by the Department. Such action must be filed not later than 30 days after a written copy of the final decision by the Department is given by personal service or registered or certified mail to the persons seeking judicial review. (1977, 2nd Sess., c. 1182, s. 2.)

Chapter 131A.

Health Care Facilities Finance Act.

Sec.	Sec.
131A-1. Short title.	131A-12. Trust agreement or resolution.
131A-2. Legislative findings.	131A-13. Revenues; pledges of revenues.
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131A-10. Credit of State not pledged.	131A-21. Tax exemption.
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	131A-23. Additional method.
	131A-24. Liberal construction.
	131A-25. Inconsistent laws inapplicable.

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;
- (7) "State" means the State of North Carolina;
- (8) "Federally guaranteed security" means any security, investment or evidence of indebtedness issued pursuant to any provision of federal law for the purpose of financing or refinancing the cost of any health care facilities which is insured or guaranteed, directly or indirectly, in whole or in part as to the repayment of principal or interest by the United States of America or any instrumentality thereof; and
- (9) "Federally insured mortgage note" means any loan secured by a mortgage or deed of trust on any health care facilities owned by any public or nonprofit agency which is insured or guaranteed, directly or indirectly, in whole or in part as to the repayment of principal and interest by the United States of America or any instrumentality thereof, or any commitment by the United States of America or any instrumentality thereof to so insure or guarantee such a loan secured by a mortgage or a deed of trust. (1975, c. 766, s. 1; 1979, c. 54, 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.

Editor's Note. — The 1979 amendment deleted "and" at the end of subdivision (6), and added subdivisions (8) and (9).

Session Laws 1979, c. 54, s. 14, contains a severability clause.

Session Laws 1979, c. 54, ss. 15, 16, provide: "The foregoing sections of this act 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.

This act, being necessary for the health and welfare of the people of the State of North Carolina, shall be liberally construed to effect the purposes thereof."

§ 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 loan agreements and agreements of sale or leases 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, loan repayments, charges, fees or other revenues, including any federally guaranteed security and moneys received therefrom whether such securities are initially acquired by the Commission or a public or nonprofit agency, 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, to lend money to any public or nonprofit agency to pay all or any part of the cost of health care facilities, to acquire any federally guaranteed security or any federally insured mortgage note, to lend money to any public or nonprofit agency for the acquisition of any federally guaranteed security 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, loan repayments, 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;
- (13) To sue and be sued in its own name, plead and be impleaded;
- (14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use any such federally guaranteed security or federally insured mortgage note in such manner as the Commission deems in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any public or nonprofit agency to finance or refinance the cost of any health care facilities.

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; 1979, c. 54, ss. 2-6.)

Editor's Note. — The 1977 amendment added the last paragraph of the section.

The 1979 amendment inserted "loan agreements and" near the middle of subdivision (1), substituted "leases" for "lease" near the middle of subdivision (1), inserted "loan repayments" near the beginning of subdivision (5), inserted "including any federally guaranteed security and moneys received therefrom whether such securities are initially acquired by the Commission or a public or nonprofit agency" near the middle of subdivision (5), inserted "to lend money to any public or nonprofit agency to pay all or any part of the cost of health care facilities, to acquire any federally guaranteed security or any federally insured mortgage note, to lend money to any public or nonprofit agency for the acquisition of any federally guaranteed

security" near the middle of subdivision (7), inserted "loan repayments" near the middle of subdivision (9), deleted "and" at the end of subdivision (12), and added subdivision (14).

Session Laws 1979, c. 54, s. 14, contains a severability clause.

Session Laws 1979, c. 54, ss. 15, 16, provide: "The foregoing sections of this act 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.

This act, being necessary for the health and welfare of the people of the State of North Carolina, shall be liberally construed to effect the purposes thereof."

§ 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 nor any loan made 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 or a loan agreement 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 or loan agreement;
- (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; 1979, c. 54, s. 7.)

Editor's Note. — The 1979 amendment inserted "or a loan agreement" near the middle of subdivision (2) and added "or loan agreement" at the end of subdivision (2).

Session Laws 1979, c. 54, s. 14, contains a severability clause.

Session Laws 1979, c. 54, ss. 15, 16, provide: "The foregoing sections of this act 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. This act, being necessary for the health and welfare of the people of the State of North Carolina, shall be liberally construed to effect the purposes thereof."

§ 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 loan agreements and agreements of sale or lease, with the Commission to facilitate the financing or refinancing, acquiring, constructing, equipping, providing, operating and maintaining of health care facilities and pursuant to any such loan agreement or 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 loan repayments, purchase price payments or rent therefor from any funds available for such purposes. (1975, c. 766, s. 1; 1979, c. 54, s. 8.)

Editor's Note. — The 1979 amendment inserted "loan agreements and" near the beginning of the section, "or refinancing" and "loan agreement or" near the middle of the section, and "loan repayments" near the end of the section.

Session Laws 1979, c. 54, s. 14, contains a severability clause.

Session Laws 1979, c. 54, ss. 15, 16, provide: "The foregoing sections of this act 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. This act, being necessary for the health and welfare of the people of the State of North Carolina, shall be liberally construed to effect the purposes thereof."

§ 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; loan agreements; 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 or lend money to any public or nonprofit agency in such manner as shall effectuate the purposes of this Chapter, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent herewith. Any such loan agreement or 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 covered by such agreement;

- (2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement 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 or to make the loan with respect thereto;
- (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 covered by any such agreement, 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 loan agreement or 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 covered by any such agreement shall be retired or provision for such retirement shall be made; and
- (5) The obligation of the public or nonprofit agency to make loan repayments or 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 a loan agreement or an agreement of sale or lease, including the obligation to make loan repayments or 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 with respect to which a loan is made or other health care facilities of the health care facilities of the public agency or from any federally guaranteed security and moneys received therefrom 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; 1979, c. 54, s. 9.)

Editor's Note. — The 1979 amendment inserted "or lend money to any public or nonprofit agency" and "a loan agreement or" near the middle of the first sentence of the

second paragraph, inserted "loan agreement or" near the beginning of the second sentence, substituted "covered by such agreement" for "sold or leased thereunder" at the end of

subdivision (1), deleted "or" after "sale" near the beginning of subdivision (2), inserted "or the loan repayments under the loan agreement" near the middle of subdivision (2), added "or to make the loan with respect thereto" at the end of subdivision (2), substituted "covered by any such agreement" for "so sold or leased" near the middle of subdivision (3), added "the loan agreement or" at the beginning of subdivision (4), substituted "covered by any such agreement" for "sold or leased thereunder" near the end of subdivision (4), inserted "loan repayments or" near the beginning of subdivision (5), inserted "a loan agreement or" and "loan repayments or" near the beginning of the second to the last paragraph, inserted "or with respect to which a loan is made", "of the health care facilities", and "or from any

federally guaranteed security and moneys received therefrom" near the middle of that paragraph.

Session Laws 1979, c. 54, s. 14, contains a severability clause.

Session Laws 1979, c. 54, ss. 15, 16, provide: "The foregoing sections of this act 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.

This act, being necessary for the health and welfare of the people of the State of North Carolina, shall be liberally construed to effect the purposes thereof."

§ 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 reversion 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 borrower, 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; 1979, c. 54, s. 10.)

Editor's Note. — The 1979 amendment inserted "borrower," near the end of the second paragraph.

Session Laws 1979, c. 54, s. 14, contains a severability clause.

Session Laws 1979, c. 54, ss. 15, 16, provide: "The foregoing sections of this act 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.

This act, being necessary for the health and welfare of the people of the State of North Carolina, shall be liberally construed to effect the purposes thereof."

§ 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, loan repayments, 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, including any payments in respect of any federally guaranteed security or any federally

insured mortgage note, the duties of the Commission with respect to the acquisition, construction, maintenance, repair and operation of any health care facilities, the fees, loan repayments, 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 depository 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 off 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; 1979, c. 54, s. 11.)

Editor's Note. — The 1979 amendment inserted "loan repayments" near the middle of the second sentence and near the end of the third sentence, and inserted "including any payments in respect of any federally guaranteed security or any federally insured mortgage note" near the middle of the third sentence.

Session Laws 1979, c. 54, s. 14, contains a severability clause.

Session Laws 1979, c. 54, ss. 15, 16, provide: "The foregoing sections of this act 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.

This act, being necessary for the health and welfare of the people of the State of North Carolina, shall be liberally construed to effect the purposes thereof."

§ 131A-13. Revenues; pledges of revenues. — (a) The Commission is hereby authorized to fix and to collect fees, loan repayments, 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, loan repayments, 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 loan agreement, 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 loan repayments, 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; 1979, c. 54, s. 12.)

Editor's Note. — The 1979 amendment inserted "loan repayments" near the beginning of the first sentence of subsection (a), near the beginning of the first sentence of subsection (c), and near the middle of subsection (d); and inserted "any loan agreement" near the middle of the last sentence of subsection (c).

Session Laws 1979, c. 54, s. 14, contains a severability clause.

Session Laws 1979, c. 54, ss. 15, 16, provide: "The foregoing sections of this act 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.

"This act, being necessary for the health and welfare of the people of the State of North Carolina, shall be liberally construed to effect the purposes thereof."

§ 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, loan repayments, 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; 1979, c. 54, s. 13.)

Editor's Note. — The 1979 amendment inserted "loan repayments" near the middle of the first sentence.

Session Laws 1979, c. 54, s. 14, contains a severability clause.

Session Laws 1979, c. 54, ss. 15, 16, provide: "The foregoing sections of this act 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.

"This act, being necessary for the health and welfare of the people of the State of North Carolina, shall be liberally construed to effect the purposes thereof."

§ 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 131B.

Licensing of Ambulatory Surgical Facilities.

Sec.

131B-1. Definitions.

131B-2. Purpose.

131B-3. License requirement.

131B-4. Denial, suspension, or revocation of license.

Sec.

131B-5. Rules and regulations.

131B-6. Enforcement.

131B-7. Inspections.

131B-8. Penalties.

131B-9. Injunctive relief.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3, as amended by Session Laws 1977, 2nd Sess., c. 1214, 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 Governmental Evaluation Commission whose

function is to conduct a performance evaluation of the programs and functions of each such agency and report to the 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, as amended, is codified as § 143-34.10 et seq.

§ 131B-1. Definitions. — As used in this Chapter, unless the context requires otherwise, the following terms have the meanings specified:

- (1) "Ambulatory Surgical Facility" means a public or private facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. Such term does not include the offices of private physicians or dentists, whether for individual or group practice, unless they elect to apply for licensing.
- (2) "Department" means the North Carolina Department of Human Resources.
- (3) "Person" means an individual; a trust or estate; a partnership; a corporation, including associations, joint-stock companies, and insurance companies; the State, or a political subdivision or instrumentality of the State. (1977, 2nd Sess., c. 1214, s. 1.)

Cross Reference. — As to certificate of need required for ambulatory surgical facility, see § 131-175 et seq.

Sess., c. 1214, s. 3, provides that the act is effective 90 days after ratification. The act was ratified June 16, 1978.

Editor's Note. — Session Laws 1977, 2nd

§ 131B-2. Purpose. — The purpose of this Chapter is to provide for the development, establishment and enforcement of basic standards:

- (1) For the care and treatment of individuals in ambulatory surgical facilities, and
- (2) For the maintenance and operation of ambulatory surgical facilities so as to ensure safe and adequate treatment of such individuals in ambulatory surgical facilities. (1977, 2nd Sess., c. 1214, s. 1.)

§ 131B-3. License requirement. — (a) No person shall operate an ambulatory surgical facility without a license obtained from the Department.

(b) Applications shall be available from the Department and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A one-year license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Chapter and the rules, regulations, or standards promulgated by the Department under this Chapter.

(c) A license to operate an ambulatory surgical facility shall be annually renewed upon the filing and departmental approval of a renewal application. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) Licenses shall be posted in a conspicuous place on the licensed premises. (1977, 2nd Sess., c. 1214, s. 1.)

§ 131B-4. Denial, suspension, or revocation of license. — (a) Subject to subsection (b), the Department is empowered to deny a new or renewal application for a license, and to suspend or revoke an existing license upon a determination that there has been a substantial failure to comply with the provisions of this Chapter or the rules, regulations or standards promulgated under this Chapter.

(b) The provisions of Chapter 150A of the General Statutes shall govern all administrative action and judicial review in the cases where the Department has taken the action described in subsection (a). (1977, 2nd Sess., c. 1214, s. 1.)

§ 131B-5. Rules and regulations. — The Medical Care Commission is empowered to adopt, amend and promulgate all necessary rules, regulations and standards as may be designed to further the accomplishment of this Chapter. These rules, regulations or standards shall be no stricter than those issued by the Medical Care Commission under G.S. 131-126.7 of the Hospital Licensing Act. The Medical Care Commission shall adopt its rules, regulations and standards within 30 days of the effective date of this Chapter. (1977, 2nd Sess., c. 1214, s. 1.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1214, s. 3, provides that the act is effective 90 days after ratification. The act was ratified June 16, 1978.

§ 131B-6. Enforcement. — The Department shall enforce the rules, regulations and standards adopted, amended or promulgated by the Medical Care Commission with respect to ambulatory surgical facilities. (1977, 2nd Sess., c. 1214, s. 1.)

§ 131B-7. Inspections. — The Department shall make or cause to be made such inspections of ambulatory surgical facilities as it deems necessary. The Department is empowered to delegate to a State officer, agent, board, bureau or division of State government the authority to make such inspections according to the rules, regulations and standards promulgated by the Department. The Department may revoke such delegated authority in its discretion. (1977, 2nd Sess., c. 1214, s. 1.)

§ 131B-8. Penalties. — A person who owns (in whole or in part) or operates an ambulatory surgical facility without a license is guilty of a misdemeanor, and upon conviction will be subject 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. Each day of continuing violation after conviction is considered a separate offense. (1977, 2nd Sess., c. 1214, s. 1.)

§ 131B-9. Injunctive relief. — The Department may commence an action in the name of the State for an injunction or other process against any person to prevent the operation of an ambulatory surgical facility without a license. Such action shall be brought in the Superior Court of Wake County. (1977, 2nd Sess., c. 1214, s. 1.)

Chapter 132.

Public Records.

Sec.

132-1. "Public records" defined.

132-1.1. Confidential communications by legal counsel to public board or agency; not public records.

132-4. Disposition of records at end of official's term.

Sec.

132-5. Demanding custody.

132-5.1. Regaining custody; civil remedies.

132-9. Access to 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.)

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

For comment on public access to government held records, see 55 N.C.L. Rev. 1187 (1977).

Applications for Censure as Speech and Language Pathologists and Audiologists Are Public Records. — See opinion of Attorney General to Mariana Newton, Ph.D., Chairman, Board of Examiners for Speech and Language Pathologists and Audiologists, 45 N.C.A.G. 188 (1976).

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).

Copies of Forms Maintained by Law Enforcement Officers Are Not Public Records. — The copy of form HP-332 (affidavit form) maintained by the arresting officer which is completed when a person refuses to take a chemical test to determine alcoholic content of the blood, is not a public record and subject to inspection. See opinion of Attorney General to Barbara Smith, Assistant Secretary, Department of Crime Control and Public Safety, 48 N.C.A.G. 1 (1978).

The copy of HP-332A (rights of person requested to take chemical test to determine alcoholic content of blood under G.S. 20-161(a)) which maintained by arresting officer is not a public record and subject to inspection. See opinion of Attorney General to Barbara Smith, Assistant Secretary, Department of Crime Control and Public Safety, 48 N.C.A.G. 1 (1978).

The copy of the alcohol influence report (HP-327) which is maintained by the arresting officer and the copy maintained at troop headquarters is not a public record and subject to inspection. See opinion of Attorney General to Barbara Smith, Assistant Secretary, Department of Crime Control and Public Safety, 48 N.C.A.G. 1 (1978).

The departmental copy of the N.C. uniform traffic ticket and complaint, which is submitted by a highway patrolman to the district first sergeant who transmits it to the Traffic Record Section of the Division of Motor Vehicles, is not a public record and subject to inspection during the time it is maintained at the patrol district headquarters. See opinion of Attorney General to Barbara Smith, Assistant Secretary, Department of Crime Control and Public Safety, 48 N.C.A.G. 1 (1978).

The enforcement division copy of the N.C. uniform traffic ticket and complaint, which is maintained by the officer issuing the complaint and includes his notes and other evidence, it not a public record and subject to inspection prior to trial of the offense charged in the complaint. See opinion of Attorney General to Barbara Smith, Assistant Secretary, Department of Crime

Control and Public Safety, 48 N.C.A.G. 1 (1978).

The enforcement division copy of the N.C. uniform traffic ticket and complaint is not a public record and subject to inspection in the patrol district headquarters after the trial of the offense charged in the complaint. See opinion of Attorney General to Barbara Smith, Assistant Secretary, Department of Crime Control and Public Safety, 48 N.C.A.G. 1 (1978).

The chemical test operator's log (DHS-2069) is not a public record and subject to inspection while in the possession of the chemical test

operator. See opinion of Attorney General to Barbara Smith, Assistant Secretary, Department of Crime Control and Public Safety, 48 N.C.A.G. 1 (1978).

The breathalyzer operational checklist (DHS-2012) which is completed and maintained by the breathalyzer operator is not a public record and subject to inspection. See opinion of Attorney General to Barbara Smith, Assistant Secretary, Department of Crime Control and Public Safety, 48 N.C.A.G. 1 (1978).

§ 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), aff'd, 293 N.C. 18, 235 S.E.2d 150 (1977).

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), aff'd, 293 N.C. 18, 235 S.E.2d 150 (1977).

§ 132-6. Inspection and examination of records.

Editor's Note. — For comment on public access to government held records, see 55 N.C.L. Rev. 1187 (1977).

§ 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. For comment on public access to government held records, see 55 N.C.L. Rev. 1187 (1977).

Chapter 133.**Public Works.****Article 1.****General Provisions.**

Sec.

133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.

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

Article 2.**Relocation Assistance.**

Sec.

133-10.1. Authorization for replacement housing.

133-14. Regulations and procedures.

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.

(g) On all facilities which are covered by this Article, other than those listed in subsection (c) of this section and which require any job-installed finishes, the plans and specifications shall include the color schedule. (1953, c. 1339; 1957, c. 994; 1963, c. 752; 1973, c. 1414, s. 2; 1979, c. 891.)

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

The 1979 amendment, effective July 1, 1979, added subsection (g).

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

Chapter 89 of the General Statutes, referred to in this section, has been recodified as Chapter 89A.

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.****Article 1.****Division of Youth Services in the
Department of Human Resources.****Sec.**

- 134A-1. Legislative intent and purpose.
 134A-2. Definitions.
 134A-3 to 134A-5. [Repealed.]
 134A-6. Transfer of institutions.
 134A-7. [Repealed.]
 134A-8. Powers and duties of Secretary of
 Human Resources.
 134A-9. [Reserved.]

Article 2.**Director of Youth Services.**

- 134A-10 to 134A-14. [Repealed.]
 134A-15 to 134A-17. [Reserved.]

Article 3.**Commitment and Care.**

- 134A-18, 134A-19. [Repealed.]
 134A-20. Program.

Sec.

- 134A-21. Authority to provide necessary
 medical or surgical care.
 134A-22. Compensation to children in care.
 134A-23, 134A-24. [Repealed.]
 134A-25. Criminal offense to aid escapes.
 134A-26. Visits and community activities.
 134A-27, 134A-28. [Repealed.]
 134A-29. [Reserved.]

Article 4.**Prerelease and Release.**

- 134A-30 to 134A-33. [Repealed.]
 134A-34, 134A-35. [Reserved.]

Article 5.**Detention Services.**

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

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 "Secretary" for "Commission" in subdivision deleted subdivisions (2), defining "Commission," (13). and (6), defining "Director," and substituted

§§ 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, 134A-19: Repealed by Session Laws 1979, c. 815, s. 3.

Cross Reference. — For present provisions as to commitment of delinquent juveniles to the Division of Youth Services, see § 7A-652.

§ 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; 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, 134A-24: Repealed by Session Laws 1979, c. 815, s. 3.

Cross Reference. — For present provisions as to the legal effect of an adjudication of delinquency, see § 7A-638.

§ 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, 134A-28: Repealed by Session Laws 1979, c. 815, s. 3.

Cross Reference. — For present provisions as to the transfer authority of the Governor, see § 7A-653.

§ 134A-29: Reserved for future codification purposes.

ARTICLE 4.

Prerelease and Release.

§§ 134A-30 to 134A-33: Repealed by Session Laws 1979, c. 815, s. 3.

Cross Reference. — For present provisions as to prerelease and release of juveniles, see §§ 7A-588 through 7A-656.

§§ 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.**

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135-86. Transfer of retirees.

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 of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly

except participants in the Legislative Intern Program and pages. 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; 1979, c. 972, 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).

The 1979 amendment, effective July 1, 1979, deleted "or officer" after "any member" near the end of the first sentence of subdivision (10), and added the second sentence of subdivision (10).

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. On or after July 1, 1979, upon election, appointment or employment, a legislative employee shall automatically become a member of the Teachers' and State Employees' Retirement System.

- (7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963, and who became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 135-5(b) as in effect at the date of such retirement.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b), subdivisions (1), (2) and (3).
 - b. In lieu of the benefits provided in paragraph a of this subdivision (7) any member who separates from service on or after July 1, 1951, and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.
 - c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July 1, 1951, and prior to the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of

Trustees setting forth at what time, subsequent to July 1, 1951, and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

- d. Should a teacher or employee who retired on an early or service retirement allowance be restored to service prior to the attainment of the age of 62 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to the allowance described in 1 below reduced by the amount in 2 below.

1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.

2. The actuarial equivalent of the retirement benefits he previously received.

- e. Should a teacher or employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of his retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1 and ending December 31) will not exceed the member's average final compensation. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 135-1(3).

- (8) The provisions of this subdivision (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967 or whose account is active on July 1, 1967, or has not withdrawn his contributions, the aforesated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be

computed in accordance with the provisions of G.S. 135-5(b1); provided that such benefits will be computed in accordance with (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with (b3) on or after July 1, 1969. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested.

- b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

<i>Age at Retirement</i>	<i>Percentage Reduction</i>
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

- c. The provisions of paragraphs d and e of the preceding subdivision (7) shall apply equally to this subdivision (8).

- (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; 1979, c. 396; c. 972, s. 2.)

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).

The 1977 amendment added subdivision (9).

The first 1979 amendment inserted "at the time of his retirement" near the middle of the

first sentence of paragraph e of subdivision (7).

The second 1979 amendment, effective July 1, 1979, added the last sentence to subdivision (1).

Session Laws 1977, c. 783, s. 5, contains a severability clause.

As the rest of the section was not changed by the amendments, only the opening paragraph and subdivisions (1), (7), (8), and (9) are set out.

§ 135-4. Creditable service. — (a) Under such rules and regulations as the Board of Trustees shall adopt, each member who was a teacher or State employee at any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946, shall file a detailed statement of all North Carolina service as a teacher or State employee rendered by him prior to the date of establishment for which he claims credit; provided, that, notwithstanding the foregoing, any member retiring on or after July 1, 1965, with credit for not less than 10 years of membership service shall file such detailed statement of service as a teacher or State employee rendered by him prior to July 1, 1941, for which he claims credit; provided, that any member who retired on a service retirement allowance prior to July 1, 1965, who at the time of his retirement did not qualify for credit for his service as a teacher or State employee prior to July 1, 1941, may request on and after July 1, 1971, that his original benefit be recalculated, in accordance with the formula prevailing at the time of his retirement, to include credit for such service with the new benefit to become effective on the first of the month following certification of the prior service; provided, that any person who is a member of the Teachers' and State Employees' Retirement System on July 1, 1974, and who was previously employed by a participating unit of the North Carolina Local Governmental Employees' Retirement System and who terminated his service with such unit prior to its participation in the North Carolina Local Governmental Employees' Retirement System shall file a detailed statement of all service to such political entity. Certification of such service shall be furnished to the Teachers' and State Employees' Retirement System.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for service retirement, disability retirement, early retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently returns to service for a period of five years, may thereafter repay in a lump sum the amount withdrawn plus regular interest thereon from the date of withdrawal

through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when his account was closed.

On and after July 1, 1973, a member whose account in the North Carolina Local Governmental Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the North Carolina Local Governmental Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

On or after July 1, 1979, a member who has obtained sixty (60) months of aggregate service, or five (5) years of membership service, as an employee of the North Carolina General Assembly, except Legislators, participants in the Legislative Intern Program and pages, may make a lump sum payment together with interest, and an administrative fee for such service, to the Teachers' and State Employees' Retirement System of an amount equal to what he would have contributed had he been a member on his first day of employment.

(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 no benefit is allowable in another public retirement system as a result of the 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) All repayments and purchases of service credits, allowed under the provisions of this section, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the board of trustees upon the advice of the consulting actuary.

(n) 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.

(o) Notwithstanding any other provision of this Chapter, a member who is presently a court reporter may buy in time spent serving as court reporter prior to the establishment of the Uniform Court System in 1968 by purchasing service credits, provided that the purchase payment equals the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities. Account shall be taken of the additional retirement allowance arising on account of the additional service credit commencing at the earliest date of which the member could retire or of a reduced retirement allowance as determined by the board of trustees upon the advice of the consulting actuary. (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; 1979, c. 826; c. 866, s. 2; c. 867; c. 972, s. 3.)

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 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 (k).

The second 1975 amendment, effective July 1, 1975, repealed the former first paragraph of 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 subsection (n).

Session Laws 1979, c. 826, effective July 1, 1979, added subsection (o).

Session Laws 1979, c. 866, effective July 1, 1979, deleted "the member was not vested at the

time of separation and the service was not creditable after separation or withdrawal in any other public retirement system and only if" after "only if" near the middle of the third sentence of the first paragraph of subsection (l) and substituted "the" for "such" near the end of that sentence.

Session Laws 1979, c. 867, effective July 1, 1979, inserted "and purchases of service credits, allowed under the provisions of this section" near the beginning of the first sentence of subsection (m), added "and purchases" at the end of that sentence, and added the second sentence to subsection (m).

Session Laws 1979, c. 972, effective July 1, 1979, added the last paragraph to subsection (e).

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

Second Paragraph of G.S. 135-4(m) Was Not Repealed by Session Laws 1975, Chapter 875.

— See opinion of Attorney General to Mr. W. H. Hambleton, Director, Retirement and Health Benefits Division, Department of the Treasurer, Nov. 8, 1977.

§ 135-5. Benefits. — (a) Service Retirement Benefits. —

(1) Any member in service may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years or shall have completed 30 years of service, and notwithstanding that, during such period of notification, he may have separated from service.

(2) A member in service who attains age 70 shall make timely application for retirement, in accordance with (1) above, to be effective no later than the first of July coincident with or next following his 70th birthday: Provided that, upon the approval of his employer, any member may be continued in service on a year-to-year basis.

(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 ($1\frac{1}{2}\%$) 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 ($\frac{1}{4}$ 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 ($\frac{1}{4}$ 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.

(1) Death Benefit Plan. — There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement 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 under the System 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, or
- (4) The compensations on which contributions were made by the member during the highest 12-month period of the prior 24-month period ending on the last day of the month on which his death occurs;

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 under the System on his death pursuant to the provisions of subsection (f) of this section. For the purposes of this Plan, 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 under the System, provided said disability retirement allowance had not been discontinued or revoked during said one-year period.

The death benefit provided in this subsection (1) 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; or
- (7) After December 31, 1978 and after he has attained age 70.

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, but before January 1, 1979, after attaining age 65, if he or she had not yet attained 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 Plan 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 trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, 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 trust 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 trust 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).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and Management of funds, G.S. 135-7, are hereby made applicable to the Plan.

(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.

(aa) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. 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; 1979, c. 838, s. 99; c. 862, ss. 1, 4, 5; c. 972, s. 4; c. 975, s. 1.)

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 1979, c. 838, effective July 1, 1979, added subsection (aa).

Session Laws 1979, c. 862, effective January 1, 1979, substituted "70" for "65" near the beginning of subdivision (2) of subsection (a) and substituted "70th" for "sixty-fifth" near the middle of that subdivision, added subdivision (7) to the second paragraph of subsection (l), and inserted "but before January 1, 1979" near the beginning of the third paragraph of subsection (l).

Session Laws 1979, c. 972, effective July 1, 1979, added "or" at the end of subdivision (3) of the first paragraph of subsection (l), and added subdivision (4) of the first paragraph of subsection (l).

Session Laws 1979, c. 975, effective July 1, 1979, rewrote subsection (l). Chapter 975 incorporated the changes made in subsection (l) by c. 862.

In subsection (l) as set out above, subdivision (4) from Session Laws 1979, c. 972, has been added to the first paragraph of the subsection as amended by Session Laws 1979, c. 975.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

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.

(g) Officers and Other Employees; Salaries and Expenses. — The State Treasurer shall be ex officio chairman of the Board of Trustees. The Board of Trustees shall, by a majority vote of all the members, appoint a director, who may be, but need not be, one of its members. The salary of the director of the Retirement System is subject to the provisions of Chapter 126 of the General Statutes of North Carolina. The Board of Trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons, other than the director, engaged by the Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the Board of Trustees shall approve, subject to the approval of the Director of the Budget.

(1973, c. 1114; 1977, c. 564; 1979, c. 376.)

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.

The 1979 amendment, effective July 1, 1979, substituted "of the Retirement System is subject to the provisions of Chapter 126 of the General Statutes of North Carolina" for "shall be fixed by the Governor subject to the approval of the Advisory Budget Commission" at the end of the third sentence of subsection (g).

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

§ 135-7. Management of funds. — (a) Vested in Board of Trustees. — The Board of Trustees shall be the trustee of the several funds created by this Chapter as provided in G.S. 135-8.

(c) Custodian of Funds; Disbursements; Bond of Director. — The State Treasurer shall be the custodian of the several funds and shall invest their assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(1979, c. 467, ss. 14, 15.)

Editor's Note. —

The 1979 amendment substituted the present provisions of subsection (a) for former subsection (a) which gave to the Board of Trustees the power to invest and reinvest funds in certain listed obligations and securities and to retain the services of a reputable investment counselling firm. The amendment also, in

subsection (c) added "and shall invest their assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3" at the end of the first sentence.

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

§§ 135-7.1, 135-7.2: Repealed by Session Laws 1979, c. 467, ss. 16, 17.

§ 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.

§ 135-14. Pensions of certain teachers and State employees. — Any person who was a teacher or employee of North Carolina, as defined in G.S. 135-1, for a total of 20 or more years, whose separation from service as a teacher or employee prior to April 1, 1956, was not due to any dishonorable cause, and who had an attained age of 65 prior to July 1, 1960, or by reason of physical disability was unable to work on that date, shall upon application be paid a benefit of one hundred fifty dollars (\$150.00) per month. To the extent that such payment is authorized on account of separation from service prior to July 1, 1941, the effective date of the act establishing the Teachers' and State Employees' Retirement System, such payment shall be payable from funds appropriated from the general fund of the State as provided by paragraph two of this section. To the extent that such payment is authorized on account of separation from service subsequent to July 1, 1941, such payment shall be payable from the annuity savings fund and the pension accumulation fund. This section shall apply only to a former teacher or employee who was a resident of North Carolina on July 1, 1960, or the date of application for benefit pursuant to this section.

There is hereby appropriated from the general fund of the State for each fiscal year such sum or sums as may be necessary to carry out the provisions of this section: Provided, further, that such benefits shall be payable only in the event that such applicant has not become eligible to receive federal old age and survivors insurance benefits as a result of the coordination of the Teachers' and State Employees' Retirement System with social security coverage pursuant to Article 2 of Chapter 135 of the General Statutes.

This section shall be administered by the Board of Trustees of Teachers' and State Employees' Retirement System of North Carolina created under the provisions of G.S. 135-2 and the provisions of this Chapter shall be controlling in the administration of this section in all respects or provisions except as they may be modified by this section for the purposes of this section. (1943, c. 785; 1953, c. 1132, s. 1; 1955, c. 1199, ss. 1, 2; 1957, cc. 852, 1408, 1412; 1959, c. 538, s. 1; 1979, c. 1057, ss. 1, 2.)

Editor's Note. —

The 1979 amendment, effective July 1, 1979, substituted "had an attained age of 65 prior to July 1, 1960" for "was 65 years of age on August 1, 1959" near the middle of the first sentence of the first paragraph, inserted "was" before "unable" near the end of that sentence, substituted "upon application" for "from and after July 1, 1959" and "one hundred fifty dollars (\$150.00)" for "seventy dollars (\$70.00)" near the end of that sentence, and substituted

"on July 1, 1960" for "on August 1, 1959" and deleted "on" before "the date" near the end of the last sentence in the first paragraph.

Session Laws 1979, c. 838, s. 98, provides: "Pensions paid to public school teachers and State employees with 20 or more years of service, who separated from service prior to July 1, 1941, and who had attained the age of 65 years on or before August 1, 1959, shall be increased by five percent (5%)."

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, including all employees of the General Assembly except participants in the Legislative Intern Program and pages, 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 deduction from retirement benefits or by other appropriate method an amount not greater than the cost of such benefits for active teachers and State employees, adjusted for any appropriation by the General Assembly for qualified individuals. 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, adjusted for any appropriation by the General Assembly for qualified individuals. (1971, c. 1009, s. 1; 1973, c. 746; c. 1278, s. 1; 1975, c. 754, s. 1; 1977, c. 24; 1977, 2nd Sess., c. 1136, s. 18.1; 1979, c. 972, s. 5.)

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 actuarial experience" near 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.

The 1977, 2nd Sess., amendment, effective July 1, 1978, added "adjusted for any appropriation by the General Assembly for qualified individuals" at the end of the fourth and fifth sentences.

The 1979 amendment, effective July 1, 1979, inserted "including all employees of the General Assembly except participants in the Legislative Intern Program and pages" near the middle of the first 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."

Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

§ 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, including all employees of the General Assembly except participants in the Legislative Intern Program and pages, 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; 1979, c. 972, s. 6.)

Editor's Note. —

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

The 1979 amendment, effective July 1, 1979, inserted "including all employees of the General

Assembly except participants in the Legislative Intern Program and pages" near the middle of the first 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 and all employees of the General Assembly except participants in the Legislative Intern Program and pages, 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; 1979, c. 972, s. 7.)

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

The 1979 amendment, effective July 1, 1979, inserted "and all employees of the General

Assembly except participants in the Legislative Intern Program and pages" near the middle 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.

§ 135-62. Return of accumulated contributions.

Recovery of Contributions Following Removal for Cause. — Loss of retirement benefits as the result of the removal of a judge from office for cause other than mental or

physical incapacity does not mean that the judge forfeits his right to recover the contributions which he paid into the fund. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978).

§ 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.

§ 135-65. Post-retirement increases in allowances. — (a) Commencing with the post-retirement adjustment, effective July 1, 1974, all retirement allowances payable under the provisions of this Article shall be adjusted annually in accordance with the provisions of G.S. 135-5(o).

(b) Increases in benefits paid to members retired prior to July 1, 1978. — Notwithstanding subsection (a) of this section, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in subsection (a) of this section, shall be the current maximum four percent (4%) plus an additional one percent (1%) to a total of five percent (5%) for the year 1979 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. (1973, c. 640, s. 1; 1979, c. 838, s. 104.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, designated the former section as subsection (a), and added subsection (b).

Session Laws 1979, c. 838, s. 122, contains a severability clause.

§ 135-66. Administration; management of funds. — The State Treasurer shall be the custodian of the assets of this Retirement System and shall invest them in accordance with the provisions of G.S. 147-69.2 and 147-69.3. (1973, c. 640, s. 1; 1979, c. 467, s. 18.)

Editor's Note. — The 1979 amendment rewrote this section.

§§ 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.)

§ 135-86. Transfer of retirees. — Any retired clerks of superior court of the General Court of Justice who retired prior to July 1, 1975, with 30 years or more of creditable service, may elect to have their retirement accounts transferred from the Teachers' and State Employees' Retirement System to the Uniform Clerks of Superior Court Retirement System. Any retired clerks of superior court whose retirement accounts are transferred under this provision shall be entitled to the benefits to which they would have been entitled had they retired on the benefit formula provided in the Uniform Clerks of Superior Court Retirement System. (1977, 2nd Sess., c. 1293, s. 1.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1293, s. 4, makes the act effective July 1, 1978.

Session Laws 1977, 2nd Sess., c. 1293, s. 2, provides: "The Board of Trustees of the Teachers' and State Employees' Retirement System is hereby directed to transfer assets from the Pension Accumulation Fund of the Teachers' and State Employees' Retirement

System to the Pension Accumulation Fund of the Uniform Clerks of Superior Court Retirement System, to the extent of the reserves previously set aside to fund the benefits of transferred retired clerks of superior court as determined by the actuary, to partially offset the cost of the benefits provided under the Uniform Clerks of Superior Court Retirement System."

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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 and employees of Department of Transportation, members of Board 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 Board of Transportation, or to promise any officer or employee of the Department of Transportation or any member of the Board 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 Board of Transportation;
- (2) To influence such member of the Board 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 Board 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 Board 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; 1979, c. 298, ss. 3, 4.)

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).

The 1979 amendment substituted "member of the Board of Transportation" for "member of the Department of Transportation" throughout subsections (a) and (b). The amendment also substituted "any officer or employee of the Department of Transportation or any" for "any officer, employee or" near the end of the introductory paragraph of subsection (a).

§ 136-13.1. Use of position to influence elections or political action. — No member of the Board 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; 1979, c. 298, s. 3.)

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.

The 1979 amendment substituted "member of the Board of Transportation" for "member of the Department of Transportation" near the beginning of this section.

§ 136-13.2. Falsifying highway inspection reports. — (a) Any employee or agent employed by the Department of Transportation or by an engineering or consulting firm engaged by the Department of Transportation, who knowingly falsifies any inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a misdemeanor.

(b) Any employee, supervisor, or officer of the Department of Transportation who directs a subordinate under his direct or indirect supervision to falsify an inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a misdemeanor.

(c) Repealed by Session Laws 1979, c. 786, s. 2, effective May 8, 1979. (1979, c. 523; c. 786, s. 2.)

Editor's Note. — The 1979 amendment, effective May 8, 1979, substituted "misdemeanor" for "felony" at the end of subsections (a) and (b), and deleted subsection

(c), which read: "Any person convicted of a violation of this section shall be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisoned not more than five years, or both."

§ 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 Board of Transportation shall be eligible to any other employment in connection with the Department of Transportation, and no member of the Board 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 Board 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; 1979, ch. 298, s. 3.)

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.

The 1979 amendment substituted "member of the Board of Transportation" for "member of the Department of Transportation" in three places in the first sentence.

§ 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.)

Editor's Note. —

The first 1977 amendment added subdivision (26).

The second 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.

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."

For a survey of 1977 law on property, see 56 N.C.L. Rev. 1111 (1978).

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).

Cited in *Watkins v. Lambe-Young, Inc.*, 37 N.C. App. 30, 245 S.E.2d 202 (1978).

§ 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, of Transportation" for "Board of effective July 1, 1977, substituted "Department 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, of Transportation" for "Board of effective July 1, 1977, substituted "Department Transportation."

§ 136-19. Acquisition 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 or he may in his discretion order said railroad company to install and 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 crossing 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 than 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, s. 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 and other kinds of professional or specialized services necessary in connection with highway construction or repair 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; 1979, c. 174.)

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).

The 1979 amendment inserted "and other kinds of professional or specialized services necessary in connection with highway construction or repair" near the middle of the first sentence of subsection (f).

Section 136-28.3, referred to in subsection (d) of this section, has been repealed. For present provisions as to performance bonds, see § 44A-25 et seq.

§ 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, cert. denied, 288 N.C. 393, 218 S.E.2d 467 (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, cert. denied, 290 N.C. 550, 230 S.E.2d 765 (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, cert. denied, 290 N.C. 550, 230 S.E.2d 765 (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, cert. denied, 290 N.C. 550, 230 S.E.2d 765 (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."

Responsibility for City Streets Which Become Part of State System. — When a city street becomes a part of the State highway system, the Board of Transportation is responsible for its maintenance thereafter which

includes the control of all signs and structures within the right-of-way. Therefore, in the absence of any control over a State highway within its border, a municipality has no liability for injuries resulting from a dangerous condition of such street unless it created or increased such condition. *Shapiro v. Toyota Motor Co.*, 38 N.C. App. 658, 248 S.E.2d 868 (1978).

§ 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."

§ 136-31. Local traffic signs.

Responsibility for City Streets Which Become Part of State System. — When a city street becomes a part of the State highway system, the Board of Transportation is responsible for its maintenance thereafter which includes the control of all signs and structures within the right-of-way. Therefore, in the

absence of any control over a State highway within its border, a municipality has no liability for injuries resulting from a dangerous condition of such street unless it created or increased such condition. *Shapiro v. Toyota Motor Co.*, 38 N.C. App. 658, 248 S.E.2d 868 (1978).

§ 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, of Transportation" for "Board of effective July 1, 1977, substituted "Department 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.

§§ 136-44.30 to 136-44.34: Repealed by Session Laws 1977, c. 579.

Editor's Note. — This article was also repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. See § 143-34.13.

ARTICLE 2D.

Railroad Revitalization.

§ 136-44.35. Railroad revitalization a public purpose. — The General Assembly hereby finds that programs for railroad revitalization which assure the maintenance of safe, adequate, and efficient rail transportation services are vital to the continued growth and prosperity of the State and serve the public purpose. (1979, c. 658, s. 1.)

Editor's Note. — This section was enacted by Session Laws 1979, c. 658, s. 1. Former § 136-44.35, which was derived from Session

Laws 1977, c. 584, was rewritten and renumbered § 136-44.36 by Session Laws 1979, c. 658, ss. 1, 2.

§ 136-44.36. Department of Transportation designated as agency to administer federal and State railroad revitalization programs. — The General Assembly hereby designates the Department of Transportation as the agency of the State of North Carolina responsible for administering all State and federal railroad revitalization programs. The Department of Transportation is authorized to develop, and the Board of Transportation is authorized to adopt, a State railroad plan, and the Department of Transportation is authorized to do all things necessary under applicable State and federal legislation to properly administer State and federal railroad revitalization programs within the State. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute federal and State financial assistance for rail freight assistance programs designed to cover the costs of acquiring, by purchase, lease or other manner as the department considers appropriate, a railroad line or other rail property to maintain existing or to provide future rail service; the costs of rehabilitating and improving rail property on railroad lines to the extent necessary to permit safe, adequate and efficient rail service on such line; and the costs of constructing rail or rail related facilities for the purpose of improving the quality, efficiency and safety of freight rail service. Such authority shall also include the power to receive and administer federal financial assistance without State financial participation to railroad companies to cover the costs of local rail service continuation payments, of rail line rehabilitation, and of rail line construction as listed above. This Article shall not be construed to grant to the department the power or authority to purchase or operate any rail line or rail facilities. (1979, c. 658, s. 2.)

Editor's Note. — This section was formerly § 136-44.35. It was rewritten and renumbered by Session Laws 1979, c. 658, ss. 1, 2.

§ 136-44.37. Department to provide nonfederal matching share. — The Department of Transportation upon approval by the Board of Transportation and the advisory Budget Commission is authorized to provide for the matching share of federal rail revitalization assistance programs through private resources, county funds or State appropriations as may be provided by the General Assembly. (1979, c. 658, s. 3.)

§ 136-44.38. Department to provide State and federal financial assistance to counties for rail revitalization. — (a) The Department of Transportation is authorized to distribute to counties State financial assistance for local rail revitalization programs provided that every rail revitalization project for which State financial assistance would be utilized must be approved by the Board of Transportation and by the Advisory Budget Commission.

(b) State financial assistance to counties as authorized by this Article may not exceed ten percent (10%) of total project costs. (1979, c. 658, s. 3.)

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: Repealed by Session Laws 1979, c. 143, s. 1.

§ 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 abandoned 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, of Transportation" for "Board of effective July 1, 1977, substituted "Department 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).

Limited Liability of City When Street Becomes Part of State System. — When a city street becomes a part of the State highway system, the Board of Transportation is responsible for its maintenance thereafter which includes the control of all signs and structures within the right-of-way. Therefore, in the absence of any control over a State highway within its border, a municipality has no liability for injuries resulting from a dangerous condition of such street unless it created or increased such condition. *Shapiro v. Toyota Motor Co.*, 38 N.C. App. 658, 248 S.E.2d 868 (1978).

§ 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 traffic 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."

No road serving an essentially private use, etc. —

The proviso at the end of the first paragraph makes clear the legislative intent that no road serving an essentially "private use" is embraced

in the definition of neighborhood public road. *Watkins v. Smith*, 40 N.C. App. 506, 253 S.E.2d 354 (1979).

Where the roadway was used by defendants and their guests and invitees and by plaintiffs and their guests and invitees, such a road or driveway was not a neighborhood public road within the meaning of this section. *Watkins v. Smith*, 40 N.C. App. 506, 253 S.E.2d 354 (1979).

§ 136-68. Special proceeding for establishment 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."

§§ 136-73 to 136-75: Repealed by Session Laws 1979, c. 114, s. 1.

§ 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, of Transportation" for "Board of effective July 1, 1977, substituted "Department Transportation."

§ 136-77: Repealed by Session Laws 1979, c. 114, s. 1.

§ 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 curbs, 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).

Denial of access is to be considered, etc. —

This section, by implication, requires the trial court to instruct the jury on the nature of the controlled-access facility, and that this denial of access should be considered in determining the fair market value of the remaining land. The failure to do so is error. *Board of Transp. v. Brown*, 34 N.C. App. 266, 237 S.E.2d 854 (1977).

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.

The second 1977 amendment added subdivision (7).

Editor's Note. —

The first 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 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 Department of Transportation is hereby authorized to promulgate rules and regulations governing the size, content and location of such signs. (1973, c. 1346; 1977, c. 464, s. 7.1.)

Editor's Note. — The section originally codified as § 136-89.59 was repealed by Session Laws 1971, c. 882, s. 4.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in subdivision (5).

The amendment was inadvertently omitted in the 1977 Cumulative Supplement.

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."

Limited Liability of City When Street Becomes Part of State System. — When a city

street becomes a part of the State highway system, the Board of Transportation is responsible for its maintenance thereafter which includes the control of all signs and structures within the right-of-way. Therefore, in the absence of any control over a State highway

within its border, a municipality has no liability for injuries resulting from a dangerous condition of such street unless it created or

increased such condition. *Shapiro v. Toyota Motor Co.*, 38 N.C. App. 658, 248 S.E.2d 868 (1978).

§ 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."

§ 136-102.2. Authorization required for test drilling or boring upon right-of-way; filing record of results with Department of Transportation. — No person, firm or corporation shall make any test drilling or boring upon the right-of-way of any road or highway, under the jurisdiction of the Department of Transportation, until written authorization has been obtained from the owner or the person in charge of the land on which the highway easement is located. A complete record showing the results of the test drilling or boring shall be filed forthwith with the chairman [Secretary] of the Department of Transportation and shall be a public record. This section shall not apply to the Department of Transportation making test drilling or boring for highway purposes only. (1967, c. 923, 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" in three places.

The 1977 amendment was inadvertently omitted from the 1977 Cumulative Supplement.

§ 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.

For note discussing constitutional challenges to "quick take" condemnation proceedings, see 8 N.C. Cent. L.J. 289 (1977).

Under this article a single condemnation proceeding may include more than one tract of land, and the proceeding may be amended to include additional land provided that the additional land is described in the complaint and declaration of taking and in the land records of the county through a memorandum of action as required by § 136-104, and further, that the deposit is increased if the sum estimated for just compensation is increased. The condemnation statutes do not require that multiple tracts be contiguous in a condemnation proceeding. Board of Transp. v. Royster, 40 N.C. App. 1, 251 S.E.2d 921 (1979).

The Board of Transportation may include in a condemnation proceeding against an opposing party owner multiple tracts of land which are not contiguous. Board of Transp. v. Royster, 40 N.C. App. 1, 251 S.E.2d 921 (1979).

Amendment of Declaration to Properly Describe Lands. — When the condemnor has made an appraisal of lands taken but the lands described in the condemnation proceedings do not conform to the lands appraised, the condemnor may amend the proceeding to properly describe the lands upon which the appraisal was made. Board of Transp. v. Royster, 40 N.C. App. 1, 251 S.E.2d 921 (1979).

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).

Cited in Board of Transp. v. Greene, 35 N.C. App. 187, 241 S.E.2d 152 (1978); Board of Transp. v. Revis, 40 N.C. App. 182, 252 S.E.2d 262 (1979).

§ 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.

For note discussing constitutional challenges to "quick take" condemnation proceedings, see 8 N.C. Cent. L.J. 289 (1977).

And of the Second Paragraph. —

In accord with 2nd paragraph in original. See Board of Transp. v. Royster, 40 N.C. App. 1, 251 S.E.2d 921 (1979).

Under this article a single condemnation proceeding may include more than one tract of land, and the proceeding may be amended to include additional land provided that the additional land is described in the complaint and declaration of taking and in the land records of the county through a memorandum of action as required by § 136-104, and further, that the

deposit is increased if the sum estimated for just compensation is increased. The condemnation statutes do not require that multiple tracts be contiguous in a condemnation proceeding. Board of Transp. v. Royster, 40 N.C. App. 1, 251 S.E.2d 921 (1979).

The Board of Transportation may include in a condemnation proceeding against an opposing party owner multiple tracts of land which are not contiguous. Board of Transp. v. Royster, 40 N.C. App. 1, 251 S.E.2d 921 (1979).

Amendment of Declaration to Properly Describe Lands. — When the condemnor has made an appraisal of lands taken but the lands described in the condemnation proceedings do not conform to the lands appraised, the condemnor may amend the proceeding to properly describe the lands upon which the appraisal was made. Board of Transp. v. Royster, 40 N.C. App. 1, 251 S.E.2d 921 (1979).

The provisions of § 136-108 apply to condemnation proceedings under § 136-111 as well as under this section. Berta v. North Carolina State Hwy. Comm'n, 36 N.C. App. 749, 245 S.E.2d 409 (1978).

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.

Title dispute held to prohibit disbursement of funds. — See *Board of Transp. v. Greene*, 35 N.C. App. 187, 241 S.E.2d 152 (1978).

Cited in *City of Durham v. Manson*, 21 N.C. App. 161, 204 S.E.2d 41 (1974); *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

§ 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."

For note discussing constitutional challenges to "quick take" condemnation proceedings, see 8 N.C. Cent. L.J. 289 (1977).

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, cert. denied, 291 N.C. 448, 230 S.E.2d 766 (1976).

The provisions of this section apply to condemnation proceedings under § 136-111 as well as under § 136-104. *Berta v. North Carolina State Hwy. Comm'n*, 36 N.C. App. 749, 245 S.E.2d 409 (1978).

Assessment of Damages to Tracts Other Than Those Taken. —

A parcel of land owned by an individual and an adjacent parcel of land owned by a corporation of which that individual is the sole or principal shareholder cannot be treated as a unified tract for the purpose of assessing condemnation damages. *Board of Transp. v. Martin*, 296 N.C. 20, 249 S.E.2d 390 (1978).

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).

The provisions of § 136-108 apply to condemnation proceedings under this section as well as under § 136-104. *Berta v. North Carolina State Hwy. Comm'n*, 36 N.C. App. 749, 245 S.E.2d 409 (1978).

Effect of Conveyance of Land after Institution of Action. — The trial court did not

err in denying appellants' motion to intervene in an inverse condemnation action, where part of the land in question had been conveyed to the appellants by the plaintiffs in the condemnation action after the institution of the action, since a "taking" is envisioned as already having occurred if the property owner institutes the proceeding under this section. *Berta v. North*

Carolina State Hwy. Comm'n, 36 N.C. App. 749, 245 S.E.2d 409 (1978).

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.

The rule as to measure of damages, etc. —

The "before and after value" formula mandated by subdivision (1) of this section avoids a very practical objection that may be urged against the more popular rule of "value of the part taken plus damages to the remainder" — the objection that a jury may include in "damages to the remainder" a part of the very injury which it incorporates in "value of the part taken." *Board of Transp. v. Jones*, 38 N.C. App. 337, 248 S.E.2d 108 (1978).

Distinction Between General and Special Benefits. —

In accord with original. See *Board of Transp. v. Jones*, 38 N.C. App. 337, 248 S.E.2d 108 (1978).

The trial judge did not err in failing to define or otherwise explain the term "benefits," particularly by failing to distinguish between general and special benefits, where the plaintiff made no request at trial for further instructions, even when asked by the judge at the conclusion of his charge if there was anything further plaintiff would desire to have the jury instructed on. *Board of Transp. v. Jones*, 38 N.C. App. 337, 248 S.E.2d 108 (1978).

Items going to make up the "difference," etc. —

In accord with original. See *Board of Transp. v. Jones*, 38 N.C. App. 337, 248 S.E.2d 108 (1978).

Value of Remainder of Land Where Only a Part is Appropriated. — The fair market value of the remainder immediately after the taking where only a part or a tract of land is appropriated for highway purposes contemplates the project in its completed state and any damage to the remainder due to the user to which the part appropriated may, or probably will, be put. *Board of Transp. v. Brown*, 34 N.C. App. 266, 237 S.E.2d 854 (1977).

In determining the fair market value of the remaining land where only a part or a tract of land is appropriated for highway purposes, the owner is entitled to damage which is a consequence of the taking of the portion thereof, that is, for the injuries accruing to the residue from the taking, which includes damage resulting from the condemnor's use of the appropriated portion. *Board of Transp. v. Brown*, 34 N.C. App. 266, 237 S.E.2d 854 (1977).

The rule supported by better reason and the

weight of authority is that the just compensation assured by the Fifth Amendment to an owner, a part of whose land is taken for public use, does not include the diminution of value of the remainder, caused by the acquisition and use of adjoining lands of others for the same undertaking. *Board of Transp. v. Brown*, 34 N.C. App. 266, 237 S.E.2d 854 (1977).

If only a portion of a single tract is taken, the owner's compensation for that taking includes any element of value arising out of the relation of the part taken to the entire tract. *Board of Transp. v. Brown*, 34 N.C. App. 266, 237 S.E.2d 854 (1977).

Noise or any other element of damages to the remaining lands where only a part or a tract of land is appropriated for highway purposes is compensable only if it is demonstrably resultant from the use of the particular land taken. *Board of Transp. v. Brown*, 34 N.C. App. 266, 237 S.E.2d 854 (1977).

The landowner who has a part of his tract taken has the burden of proving by competent evidence how the use of the land taken results in damage to the remainder. *Board of Transp. v. Brown*, 34 N.C. App. 266, 237 S.E.2d 854 (1977).

The trial court erred in failing to instruct the jury that in assessing compensation they were to consider general benefits accruing to the parts of the tract not taken where, although the defendant's witness did not explicitly state that the increase in value of defendant's property was an increase common to most property within reasonable proximity of the project, that fact was clearly implicit in his testimony. *Board of Transp. v. Jones*, 38 N.C. App. 337, 248 S.E.2d 108 (1978).

The market value of property is to be determined, etc. —

The value of land taken should be ascertained as of the date of taking. *Board of Transp. v. Brown*, 34 N.C. App. 266, 237 S.E.2d 854 (1977).

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, cert. denied, 291 N.C. 448, 230 S.E.2d 766 (1976).

Where the trial judge instructed the jury that they should apply the formula set out in subdivision (1) of this section, but the defendant's value witness gave an estimate admittedly derived by applying the "value of the part taken plus damages to the remainder" formula, the trial court erred in refusing to strike the testimony of the defendant's witness. *Board of Transp. v. Jones*, 38 N.C. App. 337, 248 S.E.2d 108 (1978).

The exclusion of evidence of traffic noise from the controlled-access highway to be constructed on the part of the plaintiffs' land taken by the Department, which would cause a diminution in value of the remaining land, was prejudicial error. *Board of Transp. v. Brown*, 34 N.C. App. 266, 237 S.E.2d 854 (1977).

Applied in *Board of Transp. v. Harvey*, 28 N.C. App. 327, 220 S.E.2d 815 (1976).

Cited in *Town of Hillsborough v. Bartow*, 38 N.C. App. 623, 248 S.E.2d 364 (1978).

§ 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."

Applied in *Board of Transp. v. Royster*, 40 N.C. App. 1, 251 S.E.2d 921 (1979).

§ 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).

§ 136-127. Declaration of policy.

The purpose of this Article is to control the erection and maintenance of outdoor advertising devices in order to promote the safety, convenience and enjoyment of travel and to

protect public investment in interstate and primary highways within the State. *Bracey Adv. Co. v. North Carolina Dep't of Transp.*, 35 N.C. App. 226, 241 S.E.2d 146 (1978).

§ 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, ch. 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 appealing 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.

Quoted in *Freeland v. Greene*, 33 N.C. App. 537, 235 S.E.2d 852 (1977).

§ 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.

Quoted in *Freeland v. Greene*, 33 N.C. App. 537, 235 S.E.2d 852 (1977).

§ 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.

Quoted in *Freeland v. Greene*, 33 N.C. App. 537, 235 S.E.2d 852 (1977).

§ 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.

Administrative Remedies Must Be Exhausted. — The express language of this section makes clear the legislative intent that recourse to the courts is to be had by the aggrieved party only after exhausting all administrative remedies made available to him by rules and regulations enacted pursuant to this Article. *Freeland v. Greene*, 33 N.C. App. 537, 235 S.E.2d 852 (1977).

§ 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."

Applied in *Bracey Adv. Co. v. North Carolina Dep't of Transp.*, 35 N.C. App. 226, 241 S.E.2d 146 (1978).

§§ 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 trails;
 - (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. 136-140.7 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, 1979

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1979 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

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