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THE GENERAL STATUTES OF NORTH CAROLINA

1981 SUPPLEMENT

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, SYLVIA FAULKNER
AND D. E. SELBY, JR.

DEC 7 1981

Volume 3B

1981 Replacement

Annotated through 302 N.C. 222 and 50 N.C. App. 567. For
complete scope of annotations, see scope of volume page.

Place in Pocket of Corresponding Volume of Main Set.

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1981

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Preface

This Supplement to Replacement Volume 3B, contains the general laws of a permanent nature enacted by the General Assembly at the 1981 Session through October 10, 1981, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editor's notes point out many of the chapters 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 will appear in Replacement Volumes 4B and 4C.

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 by the General Assembly at the 1981 Session through October 10, 1981, affecting Chapters 21 through 27 of the General Statutes.

Annotations:

Sources of the annotations:

- North Carolina Reports through volume 302, p. 222.
- North Carolina Court of Appeals Reports through volume 50, p. 567.
- Federal Reporter 2nd Series through volume 650, p. 292.
- Federal Supplement through volume 515, p. 55.
- Federal Rules Decisions through volume 89, p. 719.
- Bankruptcy Reporter through volume 11, p. 138.
- United States Reports through volume 449, p. 410.
- Supreme Court Reporter through volume 101, p. 2881.
- North Carolina Law Review.
- Wake Forest Law Review.
- Campbell Law Review.
- Duke Law Journal.
- North Carolina Central Law Journal.
- Opinions of the Attorney General.

The General Statutes of North Carolina

1981 Cumulative Supplement

VOLUME 3B

Chapter 117.

Electrification.

Article 1.

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117-2. Powers.

Article 2.

Electric Membership Corporations.

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117-13. Board of directors; compensation; president and secretary.

ARTICLE 1.

Rural Electrification Authority.

§ 117-2. Powers.

The purpose of said North Carolina Rural Electrification Authority is to secure electrical service for the rural districts of the State where service is not now being rendered, and it is hereby empowered to do the following in order to accomplish that purpose:

- (1) To investigate all applications from communities unserved, or inadequately served, with electrical energy in North Carolina, and to determine the feasibility of obtaining such service therefor.
- (2) To employ such personnel as shall be necessary to conduct surveys, assist the several communities to organize and finance extensions of rural distribution lines; to negotiate with power companies and other agencies for the supply of electric energy for and on behalf of the rural communities that desire service.
- (3) To contact the power companies and other agencies contiguous to the area and areas desiring service, for the purpose of arranging for the extension by said companies, or other agencies, of service in that community for such extension as may be feasible for the power company, or other agency, contiguous to the area to finance itself.
- (4) To make estimates of costs of extension which the power company would not be willing to finance and report such findings to the citizens of the community desiring service or to the corporations organized under this Chapter, to be known as "electric membership corporations."
- (5) To estimate the service charges which said community would have to set up in addition to the rates for energy as may be found necessary in order to make extension self-liquidating.
- (6) To have authority to call upon the Utilities Commission of the State to fix such rates and service charges as will be necessary to accomplish the purpose, and the right to petition the Utilities Commission to require extension of lines by the power companies when, in its opinion, it is proper and feasible.

- (7) To have the power of eminent domain for the purpose of condemning rights-of-way for the erection of transmission and distribution lines, either in its own name, or in its own name on behalf of the electric membership corporations to be formed as provided by law. For the purposes of exercising the powers of eminent domain the North Carolina Rural Electrification Authority shall be deemed a private condemnor and shall follow the procedures of Chapter 40A for a private condemnor.
- (8) To have such right and authority to secure for said local communities or electric membership corporations as may be set up assistance from any agency of the United States government, either by gift or loan, as may be possible to aid said local community in securing electric energy for said community.
- (9) To investigate all applications from communities for the formation of electric membership corporations and determine and pass upon the question of granting the authority to form such corporations; to provide forms for making such applications; and to do all things necessary to a proper determination of the question of establishment of the local electric membership corporations.
- (10) To act as agent for any electric membership corporations formed under direction or permission of the North Carolina Rural Electrification Authority in securing loans or grants from any agency of the United States government.
- (11) To prescribe rules and regulations and the necessary blanks for the electric membership corporations in making applications for grant or loan from any agency of the United States government.
- (12) To do all other acts and things which may be necessary to aid the rural communities in North Carolina to secure electric energy. (1935, c. 288, s. 2; 1981, c. 919, s. 12.)

Effect of Amendments. — The 1981 amendment, effective January 1, 1982, added the second sentence of subdivision (7).

ARTICLE 2.

Electric Membership Corporations.

§ 117-13. Board of directors; compensation; president and secretary.

Each corporation formed under this Article shall have a board of directors, in which management of the affairs of the corporation is vested. 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; 1981, c. 478.)

Effect of Amendments. —

The 1981 amendment rewrote the first sentence, which formerly read: "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."

Chapter 118.

Firemen's Relief Fund.

Article 3.

North Carolina Firemen's Pension Fund.

Sec.

118-18 to 118-32. [Recodified.]

Article 4.

North Carolina Firemen's and Rescue Squad Workers' Pension Fund.

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- members; payments credited to separate accounts of members.
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- 118-42. Monthly pensions upon retirement.
- 118-43. Payments in lump sums.
- 118-44. Pro rata reduction of benefits when fund insufficient to pay in full.
- 118-45. Provisions subject to future legislative change.
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- 118-47. Length of service not affected by serving in more than one department or squad; transfer from one department or squad to another.
- 118-48. Effect of member being six months delinquent in making monthly payments.
- 118-49. Exemptions of pensions from attachment; rights nonassignable.

ARTICLE 1.

Fund Derived from Fire Insurance Companies.

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

Local Supplemental Firemen's Retirement Fund. — City of Asheville: 1979, 2nd Sess., c. 1315, amending 1979, c. 208; city of Belhaven: 1981, c. 294; city of Burlington: 1979, 2nd Sess., c. 1144; city of Henderson: 1981, c. 111; city of Hendersonville: 1981, c. 341; city of Laurinburg: 1979, 2nd Sess., c. 1315; city of Monroe: 1981, c. 532; city of Newton: 1981, c. 298; town of Canton: 1979, 2nd Sess., c. 1105;

town of Edenton: 1981, cc. 286, 996; town of Farmville: 1981, c. 533; town of Forest City: 1979, 2nd Sess., c. 1276; town of Lillington: 1981, c. 285; town of Waynesville: 1981, c. 288.

By virtue of Session Laws 1981, c. 906, the city of Lexington should be stricken from the bound volume. By virtue of Session Laws 1981, c. 209, the town of Forest City should be stricken from the bound volume.

§ 118-7. Disbursement of funds by trustees.

Local Modification. — City of Hickory: 1981, c. 407; town of Kernersville: 1979, 2nd Sess., c. 1106.

ARTICLE 3.

North Carolina Firemen's Pension Fund.

§§ 118-18 to 118-32: Recodified as §§ 118-33 to 118-49.

Editor's Note. — This article was rewritten by Session Laws 1981, c. 1029, s. 1, effective January 1, 1982, and has been recodified as

Article 4, §§ 118-33 through 118-49. See the Editor's note under § 118-33.

ARTICLE 4.

North Carolina Firemen's and Rescue Squad Workers' Pension Fund.

§ 118-33. Fund established; administration by board of trustees; rules and regulations.

For the purpose of furthering the general welfare and police powers and obligations of the State with respect to the protection of all its citizens from the consequences of loss or damage by fire and of injury by serious accident or illness, of increasing the protection of life and property against loss or damage by fire, of improving fire fighting and life saving techniques, of increasing the potential of fire departments, rescue squads, organizations and groups, of fostering increased and more widely spread training of personnel of these organizations and groups, and of providing incentive and inducement to participate in fire prevention, fire fighting and rescue squad activities and for the establishment of new, improved or extended fire departments, rescue squads, organizations and groups to the end that ultimately all areas of the State and all of its citizens will receive the benefits of fire protection and rescue squads' activity and a resulting reduction of loss or damage to life and property by fire hazard or injury by serious accident or illness, and in recognition of the public service rendered to the State of North Carolina and its citizens by "eligible firemen and rescue squad workers," as defined by this Article, there is created in this State a fund to be known, and designated as "The North Carolina Firemen's and Rescue Squad Workers' Pension Fund" to be administered as provided in this Article.

The North Carolina Firemen's and Rescue Squad Workers' Pension Fund is established to provide pension allowances and other benefits for eligible firemen and rescue squad workers in the State who elect to become members of the fund. The board of trustees created by this Article shall have authority to administer the fund and shall make necessary rules and regulations to carry out the provisions of this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1981, c. 1029, s. 1.)

Editor's Note. — This Article is Article 3 of this Chapter as rewritten by Session Laws 1981, c. 1029, s. 1, effective January 1, 1982, and recodified. No attempt has been made to point out the changes made by the revision, but, where appropriate, the historical citations to the former sections have been added to corresponding sections in the recodified article.

Session Laws 1981, c. 1029, s. 2, provides: "The Fund established by Session Laws 1961 Chapter 980, G.S. 118-18 et seq., 'the Firemen's Pension Fund' is made a part of the Fund established by this act as the 'Firemen's and Rescue Squad Workers' Pension Fund.'"

§ 118-34. Creation and membership of board of trustees; compensation.

There is created a board to be known as the "Board of Trustees of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund", hereinafter known as "the board".

The board shall consist of seven members:

- (1) The State Auditor, who shall act as chairman.
- (2) The State Insurance Commissioner.
- (3) The State Treasurer.
- (4) Four members to be appointed by the Governor; one a paid fireman, one a volunteer fireman, one volunteer rescue squad worker, and one representing the public at large, for terms of four years each. These members may succeed themselves.

The members presently serving on the "Board of Trustees of the Firemen's Pension Fund" shall continue to serve until the expiration of their terms. No member of the board shall receive any salary, compensation or expenses other than that provided in G.S. 138-6 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; 1981, c. 1029, s. 1.)

§ 118-35. Powers and duties of the board.

The board shall request appropriations out of the general fund for administrative expenses and to provide for the financing of this pension fund, employ necessary clerical assistance, determine all applications for pensions, provide for the payment of pensions, make all necessary rules and regulations not inconsistent with law for the government of this fund, prescribe rules and regulations of eligibility of persons to receive pensions, expend funds in accordance with the provisions of this Article, and generally exercise all other powers necessary for the administration of the fund created by this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

§ 118-36. Director.

There is created an office to be known as Director of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund. He shall be named by the board and shall serve at its pleasure. The director shall be subject to the provisions of the State Personnel Act. The director shall be bonded in such amount as may be determined by the board, and he shall promptly transmit to the State Treasurer all moneys collected by him, which moneys shall be deposited by the State Treasurer into the fund. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1969, c. 359; 1981, c. 1029, s. 1.)

§ 118-37. 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 and Rescue Squad Workers' Pension Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 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 and Rescue Squad Workers' 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 and Rescue Squad Workers' Pension Fund, and all contributions made by the members of this pension fund shall be deposited in the 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; 1981, c. 1029, s. 1.)

§ 118-38. "Eligible firemen" defined; determination and certification of volunteers meeting qualifications.

"Eligible firemen" shall mean all firemen of the State of North Carolina or any political subdivision thereof, including those performing such functions in the protection of life and property through fire fighting within a county or city governmental unit and so certified to the Commissioner of Insurance by the governing body thereof, and who belong to a bona fide fire department which, as determined by the Commissioner, is classified as not less than class "9" or class "A" and "AA" departments in accordance with rating methods, schedules, classifications, underwriting rules, bylaws or regulations effective or applied with respect to the establishment of rates or premiums used or charged pursuant to G.S. 58-131.1 or by such other reasonable methods as the Commissioner may determine, and which operates fire apparatus and equipment of the value of five thousand dollars (\$5,000) or more, and said fire department holds drills and meetings not less than four hours monthly and said firemen attend at least 36 hours of all drills and meetings in each calendar year. "Eligible firemen" shall also mean those persons meeting the other qualifications of this section, not exceeding 25 volunteer firemen plus one additional volunteer fireman per 100 population in the area served by their respective departments. Each department shall annually determine and report the names of those firemen meeting the eligibility qualifications to its respective governing body, which upon determination of the validity and accuracy of the qualification shall promptly certify the list to the board. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

§ 118-39. "Eligible rescue squad worker" defined; determination and certification of eligibility.

"Eligible rescue squad worker" means any member of a rescue squad who is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and who has attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad worker eligible for membership in the North Carolina Association of Rescue Squads, Inc., must file a roster certified by the secretary of the association of those rescue squad workers meeting the association requirements with the State Auditor by January 1 of each calendar year.

"Eligible rescue squad worker" does not mean "eligible fireman" as defined by G.S. 118-38, nor may an "eligible rescue squad worker" qualify also as an "eligible fireman" in order to receive double benefits available under this Article. (1981, c. 1029, s. 1.)

§ 118-40. Firemen's application for membership in fund; monthly payments by members; payments credited to separate accounts of members.

Those firemen who are eligible pursuant to G.S. 118-38 may make application for membership to the board. Each fireman upon becoming a member of the fund shall pay the director of the fund the sum of five dollars (\$5.00) per month. The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

§ 118-41. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of members.

Those rescue squad workers eligible pursuant to G.S. 118-39 may make application to the board for membership. All persons who subsequently become rescue squad workers may make application for membership. Each eligible rescue squad worker upon becoming a member shall pay the director of the fund the sum of five dollars (\$5.00) per month. A rescue squad worker who, on the date of the establishment of the fund, has service as a rescue squad worker certified by the Department of State Auditor may make a lump sum payment of five dollars (\$5.00) per month for each month of service as an eligible rescue squad worker as defined by G.S. 118-39, on or before July 1, 1983, for as many as 180 months together with interest at an annual rate of six percent (6%).

The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement. (1981, c. 1029, s. 1.)

§ 118-42. Monthly pensions upon retirement.

Any member who has served 20 years as an "eligible fireman" or "eligible rescue squad worker" in the State of North Carolina, as provided in G.S. 118-38 and G.S. 118-39, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of seventy-five dollars (\$75.00) per month. Any retired fireman receiving a pension of fifty dollars (\$50.00) per month shall, effective July 1, 1981, receive a pension of seventy-five dollars (\$75.00) per month.

Members shall pay five dollars (\$5.00) per month as required by G.S. 118-40 and G.S. 118-41 for a period of no longer than 20 years. No "eligible rescue squad member" shall receive a pension prior to July 1, 1986. No person shall be entitled to a pension hereunder until his official duties as a fireman or rescue squad worker shall have been terminated and he shall have retired as such according to standards or rules fixed by the board of trustees.

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 or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of seventy-five dollars (\$75.00) per month beginning the first month after his fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of his application, and annually thereafter.

Any disabled member shall not be required to make the monthly payment of five dollars (\$5.00) as required by G.S. 118-40 and G.S. 118-41.

Any member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of five dollars (\$5.00) to the fund until he has paid into the fund the sum of one thousand two hundred dollars (\$1,200). The member shall upon attaining the age of fifty-five years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of his application annually thereafter.

The pensions provided shall be in addition to all other pensions or benefits 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; 1981, c. 1029, s. 1.)

§ 118-43. Payments in lump sums.

The board shall direct payment in lump sums from the fund in the following cases:

- (1) To any fireman or rescue squad worker 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. This provision shall not be construed to preclude any active fireman or rescue squad worker from completing the requisite number of years of active service after attaining the age of 55 years necessary to entitle him to the pension.
- (2) If any fireman or rescue squad worker dies before attaining the age at which a pension is payable to him under the provisions of this Article, there shall be paid to his widow, or if there be no widow, to the person responsible for his child or children, or if there be no widow or children, then to his heirs at law as may be determined by the board or to his estate, if it is administered and there are no heirs, an amount equal to the amount paid into the fund by the said fireman or rescue squad worker.
- (3) If any fireman or rescue squad worker dies after beginning to receive the pension payable to him by this Article, and before receiving an amount equal to the amount paid into the fund by him, there shall be paid to his widow, or if there be no widow, then to the person responsible for his child or children, or if there be no widow or children, then to his heirs at law as may be determined by the board or to his estate, if it is administered and there are no heirs, an amount equal to the difference between the amount paid into the fund by the said fireman or rescue squad worker and the amount received by him as a pensioner.
- (4) Any member withdrawing from the fund shall, upon proper application, be paid all moneys the individual contributed to the fund, provided, if all or any part of the moneys contributed to the fund with respect to the member shall have been paid by any person, firm or corporation other than the member and notification of such action shall have been made to the board at the time of said contribution and each of them, then, upon proper application, by the other person, firm or corporation, the moneys contributed to the fund shall be paid to the other person, firm or corporation originally making the contribution,

upon the withdrawal of the member. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1977, c. 926, s. 2; 1981, c. 1029, s. 1.)

§ 118-44. Pro rata reduction of benefits when fund insufficient to pay in full.

If, for any reason, the fund created and made available for any purpose covered by this Article shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

§ 118-45. Provisions subject to future legislative change.

These pensions shall be subject to future legislative change or revision, and no member of the fund, or any person, is deemed to have acquired any vested right to a pension or other payment provided by this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

§ 118-46. Determination of creditable service; information furnished by applicants for membership.

The board shall determine by appropriate rules and regulations the number of years' credit for service of firemen and rescue squad workers. Firemen and rescue squad workers who are now serving as such shall furnish the board with information upon applying for membership as to previous service. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

§ 118-47. Length of service not affected by serving in more than one department or squad; transfer from one department or squad to another.

A fireman's or rescue squad worker's length of service shall not be affected by the fact that he may have served with more than one department or squad, and upon transfer from one department or squad to another, notice of the fact shall be given to the board. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

§ 118-48. Effect of member being six months delinquent in making monthly payments.

Any member who becomes six months delinquent in making monthly payments required by G.S. 118-40 and G.S. 118-41 of this Article by the tenth of the month with respect to which the 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; 1981, c. 1029, s. 1.)

§ 118-49. Exemptions of pensions from attachment; rights nonassignable.

The pensions provided are not subject to attachment, garnishments or judgments against the fireman or rescue squad worker entitled to them, nor are any rights in the fund or the pensions or benefits assignable nor are the pensions subject to any State or municipal tax. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1969, c. 486; 1981, c. 1029, s. 1.)

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 4.

Liquefied Petroleum Gases.

Sec.

119-48 to 119-53. [Recodified.]

Article 5.

Liquefied Petroleum Gases.

119-54. Purpose; definitions.

119-55. Power of Board of Agriculture to set minimum standards; regulation by political subdivisions.

Sec.

119-56. Registration of dealers; liability insurance or bond required.

119-57. Administration of Article; rules and regulations given force and effect of law.

119-58. Unlawful acts.

119-59. Penalty; injunction of violations.

119-60. Liquefied petroleum gas accidents; liability limitations.

ARTICLE 4.

Liquefied Petroleum Gases.

§§ 119-48 to 119-53: Recodified as §§ 119-54 to 119-59.

Editor's Note. — This Article was rewritten by Session Laws 1981, c. 486, s. 1, effective July 1, 1981, and has been recodified as Article 5.

ARTICLE 5.

Liquefied Petroleum Gases.

§ 119-54. Purpose; definitions.

It is the purpose of this Article to provide for the adoption and promulgation of a code of safety, and such rules and regulations setting forth minimum general standards of safety for the design, construction, location, installation, and operation of the equipment used in handling, storing, measuring, transporting, distributing, and utilizing liquefied petroleum gases and to provide for the administration and enforcement of the code and such rules and regulations thereby adopted. Words used in this Article shall be defined as follows:

- (1) "Board" means the North Carolina Board of Agriculture.
- (2) "Commissioner" means the Commissioner of Agriculture or his designated agent.
- (3) "Dealer" means any person, firm, or corporation who is engaged in or desires to engage in:
 - a. The business of selling or otherwise dealing in liquefied petroleum gases which require handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or
 - b. The business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment, or appliances which use liquefied gas. A person who engages in any of the aforementioned activities only in connection with his or his employer's use of liquefied petroleum gas and not as a business shall not be deemed to be a "dealer" for the purposes of this Article.

- (4) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butanes or isobutane), butylenes. (1955, c. 487; 1959, c. 796, s. 1; 1961, c. 1072; 1981, c. 486, s. 1.)

Editor's Note. — This Article is Article 4 as rewritten by Session Laws 1981, c. 486, s. 1, effective July 1, 1981, and recodified. Where appropriate, the historical citations to the sec-

tions in the former Article have been added to corresponding sections in the Article as rewritten and recodified.

§ 119-55. Power of Board of Agriculture to set minimum standards; regulation by political subdivisions.

The Board shall have the power and authority to set minimum standards and promulgate rules and regulations for the design, construction, location, installation, and operation of equipment and facilities used in handling, storing, measuring, transporting, distributing, and utilizing liquefied petroleum gas.

Any municipality or political subdivision may adopt and enforce a safety code dealing with the handling of liquefied petroleum gas which conforms with the regulations adopted by the Board, and the inspection service rendered by such municipality or political subdivision shall conform to the requirements of the inspection service rendered by the Board in the enforcement of this Article. (1955, c. 487; 1959, c. 796, s. 2; 1961, c. 1072; 1963, c. 671; 1967, c. 1231; 1969, c. 1133; 1975, c. 610, s. 1; 1977, c. 410; 1981, c. 486, s. 1.)

§ 119-56. Registration of dealers; liability insurance or bond required.

A person shall not hold himself out as a dealer without first having registered as herein provided. A dealer shall annually on or before January 1 of each year register with the Commissioner on a form to be furnished by the Commissioner. Such form shall give the name and address of the dealer, the place or places of and type or types of business [of] such dealer, and such other pertinent information as the Commissioner may deem necessary.

A dealer shall obtain and maintain comprehensive general liability insurance including product liability of one hundred thousand dollars (\$100,000) combined single limits and, when applicable, comprehensive automobile liability insurance of one hundred thousand dollars (\$100,000) combined single limits. Verification of said insurance coverage shall be made in a manner satisfactory to the Commissioner. In lieu of insurance, the dealer may file and maintain a bond in a form satisfactory to the Commissioner which provides protection for the public in the same amounts and to the same extent as said insurance.

The provisions of this section shall not apply to a dealer who retails liquefied petroleum gas in containers of less than 50 pounds water capacity and which retailing does not involve the filling of such containers. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1.)

Editor's Note. — Session Laws 1981, c. 486, s. 2 provides: "The insurance coverage provisions of G.S. 119-50 [119-56] as rewritten herein [recodified as this section, 119-56] shall

become effective on all policies written after July 1, 1981, and in no event shall any policy in force after July 1, 1982, fail to meet the said insurance coverage provisions."

§ 119-57. Administration of Article; rules and regulations given force and effect of law.

It shall be the duty of the Commissioner to administer all the provisions of this Article and all the rules and regulations made and promulgated under this Article; to investigate for violations of this Article and the rules and regulations adopted pursuant to the provisions thereof, and to prosecute violations of this Article or of such rules and regulations adopted pursuant to the provisions thereof. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1.)

§ 119-58. Unlawful acts.

(a) It shall be an unlawful act for any person to:

- (1) Sell any gas burning appliance designed or built for domestic use which has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the Commissioner of Agriculture;
- (2) Install any unvented space heating appliance in a mobile home as defined in G.S. 143-145(7);
- (3) Install any unvented space heating appliance in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure;
- (4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, said tank or container may be filled by weight if the tank or container is weighed before and after filling;
- (5) Disconnect an appliance from a gas supply line without capping or plugging said line before leaving the premises;
- (6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas outlets;
- (7) Violate any provisions of this Article or any rules and regulations promulgated thereunder.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, label or other marking that includes the name of the person supplying liquefied petroleum gas to said system, and it shall be unlawful for any person, other than said supplier or the owner of the system, to disconnect, interrupt or fill said system with liquefied petroleum gas without the consent of said supplier. Provided, if another registered supplier is requested by the consumer to connect his service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave said equipment in a condition consistent with this Article and the rules and regulations promulgated thereunder. (1955, c. 487; 1959, c. 796, s. 3; 1961, c. 1072; 1981, c. 486, s. 1.)

§ 119-59. Penalty; injunction of violations.

A dealer violating any of the provisions of this Article, or any of the rules and regulations made and promulgated in accordance with the provisions of this Article, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment.

In addition the Commissioner or his agent may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this Article or any of the rules or regulations made and promulgated thereunder. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1.)

§ 119-60. Liquefied petroleum gas accidents; liability limitations.

Any person who provides assistance upon request of any police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission or storage of liquefied petroleum gas, when the reasonably apparent circumstances require prompt decisions and actions, shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance unless such acts or omissions amount to willful or wanton negligence or intentional wrongdoing. Nothing in this section shall be deemed or construed to relieve any person from liability for civil damages (a) where the accident or emergency referred to above involved his own facilities or equipment or (b) resulting from any act of commission or omission on his part in the course of providing care or assistance in the normal and ordinary course of conducting his own business or profession, nor shall this section be construed to relieve from liability for civil damages any other tortfeasor not referred to herein. When the assistance takes the form of rendering first aid or emergency health care treatment, questions of liability shall be governed by G.S. 90-21.14. (1981, c. 660.)

Editor's Note. — Session Laws 1981, c. 660, s. 2, makes the act effective October 1, 1981.

Chapter 120.

General Assembly.

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Apportionment of Members; Compensation and Allowances.

Sec.

- 120-1. Senators.
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- 120-30.24. Definitions.
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- 120-30.27. Meetings of Committee.
- 120-30.28. Review of rules.
- 120-30.29. [Repealed.]
- 120-30.29A. Actions on rules.
- 120-30.30, 120-30.31. [Repealed.]
- 120-30.33. [Repealed.]
- 120-30.34. Temporary rules.
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- 120-32.1. Use and maintenance of buildings and grounds.

Sec.

- 120-32.2. State Legislative Building special police.
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- 120-36.5. Office space and equipment.

Article 8.

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

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- 120-84.1. Committee established; purpose.
- 120-84.2. Membership.
- 120-84.3. Organization.
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Committees on Pensions and Retirement.

- 120-111.1. Creation.
- 120-111.2. Duties.
- 120-111.3. Analysis of legislation.
- 120-111.4. Staff and actuarial assistance.

ARTICLE 1.

Apportionment of Members; Compensation and Allowances.

§ 120-1. Senators.

For the purpose of nominating and electing members of the Senate in 1982 and every two years thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts as follows:

District 1 shall consist of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties and shall elect two Senators.

District 2 shall consist of Carteret, Craven, and Pamlico Counties and shall elect one Senator.

District 3 shall consist of Onslow County and shall elect one Senator.

District 4 shall consist of New Hanover and Pender Counties and shall elect one Senator.

District 5 shall consist of Duplin, Jones, and Lenoir Counties and shall elect one Senator.

District 6 shall consist of Edgecombe and Halifax Counties and shall elect one Senator.

District 7 shall consist of Martin and Pitt Counties and shall elect one Senator.

District 8 shall consist of Franklin, Nash, Vance, Warren, and Wilson Counties and shall elect two Senators.

District 9 shall consist of Greene and Wayne Counties and shall elect one Senator.

District 10 shall consist of Johnston and Sampson Counties and shall elect one Senator.

District 11 shall consist of Cumberland County and shall elect two Senators.

District 12 shall consist of Bladen, Brunswick, and Columbus Counties and shall elect one Senator.

District 13 shall consist of Hoke and Robeson Counties and shall elect one Senator.

District 14 shall consist of Durham, Granville, and Person Counties and shall elect two Senators.

District 15 shall consist of Harnett, Lee and Wake Counties and shall elect three Senators.

District 16 shall consist of Alleghany, Ashe, Surry and Watauga Counties and shall elect one Senator.

District 17 shall consist of Rockingham and Stokes Counties and shall elect one Senator.

District 18 shall consist of Chatham, Moore, Orange, and Randolph Counties and shall elect two Senators.

District 19 shall consist of Anson, Montgomery, Richmond, Scotland, Stanly, and Union Counties and shall elect two Senators.

District 20 shall consist of Alamance and Caswell Counties and shall elect one Senator.

District 21 shall consist of Forsyth County and shall elect two Senators.

District 22 shall consist of Guilford County and shall elect three Senators.

District 23 shall consist of Davidson, Davie, and Rowan Counties and shall elect two Senators.

District 24 shall consist of Cabarrus and Mecklenburg Counties and shall elect four Senators.

District 25 shall consist of Alexander, Catawba, Iredell, and Yadkin Counties and shall elect two Senators.

District 26 shall consist of Avery, Burke, Caldwell, Mitchell, and Wilkes Counties and shall elect two Senators.

District 27 shall consist of Cleveland, Gaston, Lincoln, and Rutherford Counties and shall elect three Senators.

District 28 shall consist of Buncombe, Madison, McDowell, and Yancey Counties and shall elect two Senators.

District 29 shall consist of Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Polk, Swain, and Transylvania Counties and shall elect two Senators. (Code, s. 2844; Rev., s. 4398; 1911, c. 150; C. S., s. 6087; 1921, c. 161; 1941, c. 225; 1963, Ex. Sess., c. 1; 1966, Ex. Sess., c. 1, s. 1; 1971, c. 1177; 1981, c. 821.)

Effect of Amendments.—The 1981 amendment substituted "1982" for "1972" in the introductory paragraph, deleted Martin and Pitt Counties from District 6 and reduced the district from two to one Senator, created a new District 7 and renumbered former Districts 7 through 15 as present Districts 8 through 16, deleted Caswell, Rockingham, and Stokes Counties and added Watauga County to present District 16 (former 15) and reduced its Senators

from two to one, added a new District 17 and renumbered former Districts 16 through 18 as Districts 18 through 20, added Caswell County to present District 20 (former 18), renumbered former District 20 as present District 21 and former District 19 as present District 22, renumbered former Districts 21 through 27 as present Districts 23 through 29, and deleted Watauga County from present District 26 (former 24).

§ 120-2. House apportionment specified.

For the purpose of nominating and electing members of the North Carolina House of Representatives in 1982 and every two years thereafter, the State of North Carolina shall be divided into forty-four districts as follows:

District 1 shall consist of Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans, Tyrrell, and Washington Counties, and shall elect two Representatives.

District 2 shall consist of Beaufort and Hyde Counties, and shall elect one Representative.

District 3 shall consist of Craven, Jones, Lenoir, and Pamlico Counties, and shall elect three Representatives.

District 4 shall consist of Carteret and Onslow Counties, and shall elect three Representatives.

District 5 shall consist of Bertie, Gates, Hertford, Martin, and Northampton Counties, and shall elect two Representatives.

District 6 shall consist of Halifax County, and shall elect one Representative.

District 7 shall consist of Edgecombe, Nash, and Wilson Counties, and shall elect four Representatives.

District 8 shall consist of Greene and Pitt Counties, and shall elect two Representatives.

District 9 shall consist of Wayne County, and shall elect two Representatives.

District 10 shall consist of Robeson County, and shall elect two Representatives.

District 11 shall consist of Brunswick, Duplin, and Pender Counties, and shall elect two Representatives.

District 12 shall consist of New Hanover County, and shall elect two Representatives.

District 13 shall consist of Caswell, Granville, Person, Vance, and Warren Counties, and shall elect three Representatives.

District 14 shall consist of Franklin and Johnston Counties, and shall elect two Representatives.

District 15 shall consist of Wake County, and shall elect six Representatives.

District 16 shall consist of Durham County, and shall elect three Representatives.

District 17 shall consist of Chatham and Orange Counties, and shall elect two Representatives.

District 18 shall consist of Harnett and Lee Counties, and shall elect two Representatives.

District 19 shall consist of Bladen, Columbus, and Sampson Counties, and shall elect three Representatives.

District 20 shall consist of Cumberland County, and shall elect five Representatives.

District 21 shall consist of Hoke and Scotland Counties, and shall elect one Representative.

District 22 shall consist of Alamance and Rockingham Counties, and shall elect four Representatives.

District 23 shall consist of Guilford County, and shall elect seven Representatives.

District 24 shall consist of Randolph County, and shall elect two Representatives.

District 25 shall consist of Moore County, and shall elect one Representative.

District 26 shall consist of Anson and Montgomery Counties, and shall elect one Representative.

District 27 shall consist of Richmond County, and shall elect one Representative.

District 28 shall consist of Alleghany, Ashe, Stokes, Surry, and Watauga Counties, and shall elect three Representatives.

District 29 shall consist of Forsyth County, and shall elect five Representatives.

District 30 shall consist of Davidson and Davie Counties, and shall elect three Representatives.

District 31 shall consist of Rowan County, and shall elect two Representatives.

District 32 shall consist of Stanly County, and shall elect one Representative.

District 33 shall consist of Cabarrus and Union Counties, and shall elect three Representatives.

District 34 shall consist of Caldwell, Wilkes, and Yadkin Counties, and shall elect three Representatives.

District 35 shall consist of Alexander and Iredell Counties, and shall elect two Representatives.

District 36 shall consist of Mecklenburg County, and shall elect nine Representatives.

District 37 shall consist of Catawba County, and shall elect two Representatives.

District 38 shall consist of Gaston and Lincoln Counties, and shall elect four Representatives.

District 39 shall consist of Avery, Burke, and Mitchell Counties, and shall elect two Representatives.

District 40 shall consist of Cleveland, Polk, and Rutherford Counties, and shall elect three Representatives.

District 41 shall consist of McDowell and Yancey Counties, and shall elect one Representative.

District 42 shall consist of Buncombe, Henderson, and Transylvania Counties, and shall elect five Representatives.

District 43 shall consist of Haywood, Jackson, Madison, and Swain Counties, and shall elect two Representatives.

District 44 shall consist of Cherokee, Clay, Graham, and Macon Counties, and shall elect one Representative. (Code, s. 2845; Rev., c. 4399; 1911, c. 151; C. S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265; 1966, Ex. Sess., c. 5, s. 1; 1971, c. 483; 1981, c. 800.)

Effect of Amendments. — The 1981 amendment, in the introductory paragraph, substituted "1982" for "1972" and substituted "44" for "45." The 1981 amendment also added Martin County to District 5, deleted Martin County from District 6 and reduced that district's Representatives from two to one, in District 10 substituted Robeson County with two Representatives for Duplin County with one Representative, added Duplin County to Dis-

trict 11 and increased that district's Representatives from one to two, in District 21 deleted Robeson County and reduced the Representatives from three to one, increased the number of Representatives in District 36 from eight to nine, combined former Districts 42 and 43 into District 42 with five Representatives, redesignated former Districts 44 and 45 as present Districts 43 and 44, and made minor punctuation changes.

§ 120-2.1. Severability of Senate and House apportionment acts.

If any provision of any act of the General Assembly that apportions Senate or House districts is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions that can be given effect without the invalid provision; and to this end the provisions of any said act are severable. (1981, c. 771, s. 1.)

ARTICLE 6B.

Legislative Research Commission.

§ 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. (1965, c. 1045, s. 2; 1975, c. 692, s. 2; 1977, c. 915, s. 4; 1981, c. 688, s. 19.)

Editor's Note. —

Session Laws 1981, c. 688, s. 18, effective July 1, 1981, amended Session Laws 1977, c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, so as to delete the provision for expiration of this Article on June 30, 1981.

Effect of Amendments. — The 1981 amend-

ment, effective July 1, 1981, in the second sentence, deleted "or at the time of appointment of the subsequent Commission, whichever shall be later" from the end of the sentence.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 120-30.14. Meetings.

The first meeting of the Legislative Research Commission shall be held at the call of the President Pro Tempore of the Senate in the State Legislative Building or in another building designated by the Legislative Services Commission. Thereafter the Commission shall meet at the call of the chairmen. Every member of the preceding General Assembly has the right to attend all sessions of the Commission, and to present his views at the meeting on any subject under consideration. (1965, c. 1045, s. 5; 1981, c. 772, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added "or in another building designated by the Legislative

Services Commission" at the end of the first sentence.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2. (1965, c. 1045, s. 8; 1969, c. 1184, s. 8; 1977, c. 915, s. 3; 1981, c. 688, s. 2.)

Editor's Note. —

Session Laws 1981, c. 688, s. 18, effective July 1, 1981, amended Session Laws 1977, c. 915, s. 10 as amended by Session Laws 1979, c. 1030, s. 2, so as to delete the provision for expiration of this Article on June 30, 1981.

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, deleted subdivisions (5) and (6), which read: "(5) To review the rules of all administrative agencies pur-

suant 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."

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 120-30.18. Facilities; compensation of members; payments from appropriations.

The facilities of the State Legislative Building, and any other State office building used by the General Assembly, 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; 1981, c. 772, s. 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, inserted ", and any

other State office building used by the General Assembly," in the first sentence.

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; or
- e. Rules, by the Department of Transportation, relating to traffic sign ordinances, and road and bridge weight limits. (1977, c. 915, s. 1; 1979, c. 541, s. 3; 1981, c. 688, s. 1.)

Editor's Note. —

Session Laws 1981, c. 688, s. 18, effective July 1, 1981, amended Session Laws 1977, c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, so as to delete the provision for expiration of this Article on June 30, 1981.

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, in subdivision (5), substituted "; or" for a period at the end of subdivision (d) and added subdivision (e).

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 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.

(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 120-30.35. (1977, c. 915, s. 1; 1979, c. 571, s. 2; 1981, c. 688, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective October 1, 1981, in the second sentence of subsection (a), deleted "and by the Commission" from the end of the sentence.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 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 is composed of 10 members, five representatives appointed by the Commission cochairman from the House of Representatives, and five senators appointed by the Commission cochairman from the Senate. On October 1, 1977, and biennially thereafter, the cochairmen of the Commission shall appoint the Committee members from the membership of the General Assembly. The members serve for terms of two years, or until they cease to be members of the General Assembly, whichever occurs first. The members so appointed shall elect two of their number to serve as cochairmen. 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 appointment of a member of the General Assembly by the authority making the original appointment. (1977, c. 915, s. 1; 1979, c. 1030, s. 3; 1979, 2nd Sess., c. 1314, s. 1; 1981, c. 688, s. 4.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted the present second through fifth sentences for provisions which read: "The Committee is composed of nine members. On October 1 of each odd-numbered year, the cochairmen of the Legislative Research Commission shall jointly appoint Committee members from the membership of the General Assembly for terms of two years, and the members appointed shall elect one of their number to serve as chairman." The 1981 amendment also substituted "appointment of a member of the General Assembly by the authority making the original appointment" at the end of the last sentence for "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."

Session Laws 1981, c. 688, s. 16, effective July 1, 1981, provides: "Notwithstanding the provisions of G.S. 120-30.26, the new appointment authorized by this act shall be made by the cochairmen of the Legislative Research Commission not later than July 15, 1981. The term of office of a new appointee shall be from time of appointment until October 1, 1981, or until the appointee ceases to be a member of the General Assembly, whichever occurs first."

Session Laws 1981, c. 688, s. 21 contains a severability clause.

CASE NOTES

Cited in *In re Gales Creek Community Ass'n*, 300 N.C. 267, 266 S.E.2d 645 (1980).

§ 120-30.27. Meetings of Committee.

The Committee shall meet at least monthly at times and places specified by the chairman. A quorum of the Committee consists of a cochairman and four other members of the Committee or a majority of the Committee, whichever is fewer. 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; 1979, 2nd Sess., c. 1314, s. 2; 1981, c. 688, s. 5.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, in the second sentence, substituted "consists of a cochairman and four other members of the

Committee" for "shall consist of the chairman and three other Committee members."

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 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. The Committee shall review a rule submitted to it by the Director not later than the last day of the first calendar month following the filing of the rule with the Director. The Committee, by a majority vote of the members present and voting, may extend the time for review of a rule by 60 days to obtain additional information on the rule. The Director shall file notice of the extension of time for review of a rule with the agency and the Attorney General. Upon that filing, the effectiveness of the rule is delayed for a 60-day period.

(b) If the Committee finds that an agency did not act within its statutory authority in promulgating a rule or a part of the rule, the Committee, pending review by the Governor or the Council of State pursuant to this section, shall object and delay the effectiveness of the rule or the part of the rule in which the Committee finds that the agency exceeded its statutory authority. The Director of Research shall transmit to the Governor, the President of the Senate, the cochairmen of the Legislative Research Commission, the Attorney General, and the agency a written report of the objection and delay of the rule or its part and the reasons for the delay. The delay of the effectiveness of the rule or its part is effective when the Attorney General receives the written report transmitted by the Director of Research. A rule or its part that is delayed is not "effective" as defined in G.S. 150A-2(2a), unless a written order is received by the Attorney General ending the delay pursuant to subsection (f).

(c) Within 30 days after receipt of the Committee's written report, an agency shall either amend or repeal the rule to cure the defects cited as reasons for the Committee's objection and delay or return the rule unamended to the Committee.

(d) While the effectiveness of a rule or its part is delayed, the agency which has promulgated it may not adopt another rule which has substantially identical provisions to those for which the Committee delayed the effectiveness of the original rule or part of rule. To cure the defects cited as reasons for the Committee's delay, the agency may amend or repeal that rule without complying with the notice and hearing requirements contained in G.S. 150A-12. The curative rule is effective upon its filing with the Attorney General.

(e) The filing of an amendment to a rule places the entire rule before the Committee for its review.

(f) If an agency does not amend or repeal a delayed rule to cure the defects cited as reasons for the Committee's objection and delay, the Committee shall transmit to the Governor and the cochairmen of the Legislative Research Commission, the written report of the objection and delay of the rule containing the reasons for the objection and delay, and the notation that the agency returned the rule unamended to the Committee or failed to return the rule within the time specified in subsection (c).

- (1) If the rule whose effectiveness was delayed was promulgated by an agency of the Department of
 - a. Administration
 - b. Commerce
 - c. Correction
 - d. Crime Control and Public Safety
 - e. Cultural Resources
 - f. Human Resources
 - g. Natural Resources and Community Development
 - h. Revenue, or
 - i. Transportation

the Governor, within 30 days of receipt may disagree with the Committee's position and end the delay.

- (2) If the rule whose effectiveness was delayed was promulgated by any other agency, the Council of State by majority vote, within 45 days of receipt of the Committee's report by the Governor, may disagree with the Committee's position and end the delay. Upon receipt of the Committee's report by the Governor, he shall transmit a copy of that report to the other Council of State members.

If the Governor or the Council of State disagrees with the Committee's position, the Governor, acting either for himself or for the Council of State, as the case may be, shall send to the Attorney General, the agency, and to the Committee a written order ending the delay of the effectiveness of the rule. The delay of the effectiveness of the rule is ended upon receipt by the Attorney General of the Governor's written order.

Notwithstanding any other provision of law, if the Governor or the Council of State, as the case may be, fails to end the delay of the rule, within the applicable time specified in this subsection after receipt of the Committee's report, the rule or its part is automatically repealed.

(g) When a rule or its part has been delayed pursuant to subsection (b) and the Governor or the Council of State, as the case may be, disagrees with the Committee's position and ends the delay, the Committee shall submit a bill to repeal the delayed rule or its part to the General Assembly if then in session or, if not in session, to it the next regular session. The Committee may consider and recommend to the General Assembly any legislation it believes would improve administrative procedure and practices in this State. A bill submitted to the General Assembly under this subsection is eligible for consideration in that part of the regular session to which the bill is submitted. (1977, c. 915, s. 1; 1981, c. 688, s. 6.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, added the second through fifth sentences of subsection (a), rewrote subsections (b) and (c), and added subsections (d) through (g).

Session Laws 1981, c. 688, s. 17, effective October 1, 1981, provides: "Rules that were filed, but whose review periods have not expired, under the procedures in effect prior to the effective date of this act shall be reviewed and these rules or their parts may be delayed under the provisions of this act prior to December 1, 1981. The continued effectiveness of rules that have been reviewed and that have been objected to by the Administrative Rules

Review Committee or the Legislative Research Commission, or both, under the procedures in effect prior to the effective date of this act and that have not been amended or repealed by the appropriate agency in accordance with the objections of the Committee or the Commission, may be delayed by the Committee not later than December 1, 1981, under the provisions of G.S. 120-30.28(b), (c), (d), (e), (f) and (g)."

Sections 1, 4, 5, 14, 16, 18 and 19 of the 1981 act were made effective July 1, 1981. The remainder of the act was made effective Oct. 1, 1981.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 120-30.29: Repealed by Session Laws 1981, c. 688, s. 8, effective October 1, 1981.

Editor's Note. — Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 120-30.29A. Actions on rules.

(a) The Committee may institute an action in the Superior Court of Wake County for a declaratory judgment on the issue of whether a rule that has been delayed and that delay has been ended pursuant to this Article is neither valid nor within the statutory authority of the agency.

The agency whose rule has been objected to and delayed shall be notified of the commencement of the action by service process pursuant to G.S. 1A-1, Rule 4. The Committee shall have standing on behalf of the General Assembly to appear in any action authorized by this section or any appeals therefrom. Notwithstanding any other provision of law, the Committee may direct any licensed attorney on the staff of the General Assembly, or contract with other counsel, to represent the Committee in the action.

(b) In any action in which a rule is determinative of the outcome and in which the rule was objected to by the Committee, the agency must prove that the rule is valid as defined in G.S. 150A-2(9) and within the statutory authority of the agency.

The clerk of the superior court shall file a copy of the order of the court with the Attorney General. (1981, c. 688, s. 7.)

Editor's Note. — Session Laws 1981, c. 688, s. 22 makes this section effective October 1, 1981.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§§ 120-30.30, 120-30.31: Repealed by Session Laws 1981, c. 688, s. 8, effective October 1, 1981.

Editor's Note. — Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 120-30.33: Repealed by Session Laws 1981, c. 688, s. 8, effective October 1, 1981.

Editor's Note. — Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 120-30.34. Temporary rules.

Rules adopted in accordance with the procedures in G.S. 150A-13 may be reviewed by the Committee but are not subject to objection and delay as provided in G.S. 120-30.28. The Committee may review the reasons given for the adoption of a temporary rule. (1977, c. 915, s. 1; 1981, c. 1127, s. 55.)

Effect of Amendments. — The 1981 amendment added "but are not subject to objection and delay as provided in G.S. 120-30.28" at the end of the first sentence and substituted "may review the reasons given for the adoption of a temporary rule" for "in addition to reviewing

the rules, may review the reason given in the agency finding of emergency" in the second sentence.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

§ 120-30.35. Hearings.

(a) Notwithstanding the time limitation on review of rules contained in G.S. 120-30.28(a), the cochairmen of the Commission may at any time call a public hearing before the Committee on any rule or part of rule upon the recommendation of the Committee or upon the motion of any member of the Commission. Within 60 days after the public hearing, the Committee may find that the agency did not act within its statutory authority in promulgating the rule or its part and delay the continued effectiveness of the rule or its part in accordance with subsections b, c, d, e, f, and g of G.S. 120-30.28.

(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 120-19.1 through 120-19.4 shall apply to the proceedings of the Committee. (1977, c. 915, s. 1; 1981, c. 688, ss. 9, 10.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, in subsection (a), in the first sentence, substituted "time limitation on review of rules contained in G.S. 120-30.28(a)" for "provisions of G.S. 120-30.28(c) and 120-30.30(c)" and substituted "at any time call a public hearing before the

Committee on any rule or part of rule" for "call a public hearing on any rule." The 1981 amendment also added the second sentence of subsection (a), and, in subsection (c), deleted "and the Commission" from the end of the subsection.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 120-30.36. Failure to object and delay; inadmissibility into evidence.

(a) The failure of the Committee to object and delay the effectiveness of a rule or its part shall not be deemed to be approval of the statutory authority of the rule or its part by the Committee, Commission or the legislative branch.

(b) Evidence of the Committee's failure to object and delay the effectiveness of the rule or its part shall be inadmissible in all civil and criminal trials or other proceedings before courts, administrative agencies, or other tribunals. (1981, c. 688, s. 11.)

Editor's Note. — Session Laws 1981, c. 688, s. 22 makes this section effective October 1, 1981.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§§ 120-30.37 to 120-30.40: Reserved for future codification purposes.**ARTICLE 7.*****Legislative Services Commission.*****§ 120-32.1. Use and maintenance of buildings and grounds.**

(a) The Legislative Services Commission shall determine policy governing the use of the State Legislative Building and the State office building located at the northeast corner of Lane and Salisbury streets. The Commission shall allocate space within those buildings and the grounds encompassed by Jones, Wilmington, Lane and Salisbury streets; be responsible for the maintenance, security, control and care of those buildings; and promulgate rules and regulations governing the use of those buildings and their facilities. The Commis-

sion may delegate the actual work of maintenance of those buildings to the Department of Administration, which shall provide such maintenance services as may be delegated, subject to the direction of the Commission.

(b) The rules and regulations promulgated by the Legislative Services Commission under the authority of this section shall be posted in a conspicuous place in the State Legislative Building, and in the State office building located at the northeast corner of Lane and Salisbury streets, and a copy of the rules and regulations and all amendments thereto, certified by the chairman of the Legislative Services Commission, shall be filed in the office of the Secretary of State and in the office of the Clerk of the Superior Court of Wake County. When so posted and filed, these rules and regulations shall constitute notice to all persons of the existence and text of the rules and regulations. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who knowingly violates any of the rules or regulations promulgated, posted and filed under the authority of this section is guilty of a misdemeanor, and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court, or by both such fine and imprisonment. Any person, firm, corporation, partnership or association who combines, confederates, conspires, aids, abets, solicits, urges, instigates, counsels, advises, encourages or procures another or others to knowingly violate any of the rules and regulations promulgated, posted and filed under the authority of this section is guilty of a misdemeanor and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court, or by both such fine and imprisonment.

(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; 1981, c. 772, ss. 3, 4.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote subsection (a) so as to include the State office building and made other changes. In the first sentence of

subsection (b), the amendment inserted "and in the State office building located at the northeast corner of Lane and Salisbury streets."

§ 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.

The jurisdiction of the State Legislative Building security force shall also include the State office building located at the northeast corner of Lane and Salisbury streets and the area between the outer walls of that building and the near curbline of those sections of Lane and Salisbury streets that border the land on which the building is located. (1975, c. 145, s. 1; 1981, c. 772, s. 5.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added the third paragraph.

§ 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 other buildings and grounds subject to the jurisdiction of the Legislative Services Commission, 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 those buildings and grounds. So help me, God.

"Sworn and subscribed to before me, this the day of, A.D.
(1975, c. 145, s. 2; 1981, c. 772, s. 6.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, in the oath of office, substituted "other buildings and grounds subject to the jurisdiction of the Legislative Ser-

vices Commission," for "upon its grounds" and substituted "those buildings and grounds" for "the State Legislative Building and its grounds."

ARTICLE 7A.

Fiscal Research Division.

§ 120-36.5. Office space and equipment.

The Fiscal Research Division shall be provided with suitable office space and equipment. (1971, c. 659, s. 1; 1981, c. 772, s. 7; c. 859, s. 13.3.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, rewrote this section to read as follows:

"The Fiscal Research Division shall be provided with suitable office space and equipment in the State Legislative Building or in another building designated by the Legislative Services Commission."

The second 1981 amendment, effective July 1, 1981, deleted "in the State Legislative Building" from the end of the section as it stood before the first 1981 amendment. The second amendment is given effect in the section as set out above.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

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-five thousand seven hundred sixteen dollars (\$25,716), 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; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9.)

Effect of Amendments. — The 1981 amendment increased the annual salary of principal clerks from \$24,492 to \$25,716.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

ARTICLE 13.

*Joint Legislative Commission on Governmental Operations.***§ 120-74. Appointment of members; terms of office.**

The Commission shall consist of 14 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 five 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; 1981, c. 859, s. 85.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "14 members" for "13 members" at the end of the first sentence, and substituted "5

members" for "4 members" near the end of the third sentence.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 120-75. Organization of the Commission.

The President of the Senate and the Speaker of the House of Representatives shall serve as cochairmen of the Commission. Either of the cochairmen may call a meeting of the Commission. (1975, c. 490; 1977, c. 988, s. 2; 1981, c. 859, s. 86.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote this section.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 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.
- (7) To evaluate and approve or deny requests from the Department of Transportation regarding the funding of federally eligible construction projects as provided in the fourth paragraph of G.S. 136-44.2. (1975, c. 490; 1981, c. 859, s. 87.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added subdivision (7).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 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 chairmen 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 either 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; 1981, c. 859, ss. 88, 89.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "chairmen" for "chairman" near the beginning of the second sentence of subsection (a), and substituted "either chairman" for "the

chairman" near the end of the first sentence of subsection (b).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

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

ARTICLE 13A.

Joint Legislative Committee to Review Federal Block Grant Funds.

§ 120-84.1. Committee established; purpose.

There is established the Joint Legislative Committee to Review Federal Block Grant Funds. The Committee shall review acceptance and use of all federal block grant funds received by the State between August 31, 1981, and July 1, 1983. For purposes of this act, "block grant" means a block grant under the Omnibus Budget Reconciliation Act of 1981. (1981, c. 1127, s. 63.)

Editor's Note. — Session Laws 1981, c. 1127, s. 89, contains a severability clause.

§ 120-84.2. Membership.

(a) The Committee consists of 12 members as follows:

(1) Six members of the House of Representatives appointed by the Speaker;

(2) Six members of the Senate appointed by the Lieutenant Governor.

Initial appointments shall be made by October 10, 1981, and those appointees shall serve until July 1, 1983. Members may continue to serve despite expiration of a term in the General Assembly, whether or not the member has been re-elected, but resignation or removal from the General Assembly constitutes resignation or removal from the Committee. A member continues to serve until his successor is appointed. Vacancies shall be filled within 30 days by the original appointing authority. (1981, c. 1127, s. 63.)

§ 120-84.3. Organization.

(a) The Speaker of the House of Representatives and the Lieutenant Governor shall designate cochairmen of the Committee. Meetings shall be called by either of the cochairmen, and callings are subject to the Rules of the House of Representatives and the Senate.

(b) All members, including the cochairmen have the right to vote. A quorum is seven members. No action may be taken except by a majority vote, with at least seven members present and voting. House and Senate members may not vote separately; all voting is joint. If neither cochairman is present but there is a quorum, the members may elect a temporary chairman and hold a meeting.

(c) Members receive subsistence and travel as provided in G.S. 120-3.1. The Committee is funded by the Legislative Services Commission.

(d) The Committee may request professional and clerical assistance from the Legislative Services Commission. (1981, c. 1127, s. 63.)

§ 120-84.4. Powers.

The Committee may review all aspects of the acceptance and use of federal block grant funds. The Committee may also make recommendations to the General Assembly for legislation relating to federal block grant funds. (1981, c. 1127, s. 63.)

§ 120-84.5. Review procedure.

(a) After federal block grant funds have been accepted by the General Assembly, the Director of the Budget shall propose administration and use of those funds. All proposals shall be submitted to the Committee, or to the General Assembly if it is in session, for its prior approval.

(b) None of the following actions with regard to State use of federal block grant funds may be taken without the prior approval of the Committee or of the General Assembly if it is in session:

- (1) Acceptance of federal block grants,
- (2) Determination of pro rata reduction procedures and amounts for State programs,
- (3) Determination of distribution formulas,
- (4) Transfer of funds between block grants,
- (5) Intradepartmental transfer of block grant funds,
- (6) Encumbrance of anticipated block grant funds,
- (7) Adoption of departmental rules relating to federal block grant funds,
- (8) Contracting between State departments involving block grant funds, and
- (9) Any other final action affecting acceptance or use of federal block grant funds.

The Committee shall take action within 40 days of receiving a request for approval from the Office of State Budget and Management. (1981, c. 1127, s. 63.)

ARTICLE 14A.***Committees on Pensions and Retirement.*****§ 120-111.1. Creation.**

A standing committee is hereby created in the House of Representatives to be known as the Committee on Pensions and Retirement, to consist of a minimum of four members to be appointed by the Speaker of the House of Representatives. A standing committee is hereby created in the Senate to be known as the Committee on Pensions and Retirement, to consist of the following members at the minimum, the President pro tempore of the Senate, the Chairmen of the Senate Committees on Appropriations, Finance and Ways and Means. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 2.)

Effect of Amendments. — The 1981 amendment deleted the former third through sixth sentences concerning the Joint Committee on Pensions and Retirement.

§ 120-111.2. Duties.

With respect to public officers and public employees to whom State-administered retirement benefit or pension plans are applicable, the Senate and House Committees on Pensions and Retirement shall:

- (1) Study the benefits, including those available under Social Security and any other federal programs available to the public officers and employees.
- (2) Consider all aspects of retirement and pension financing, planning and operation, including the financing of accrued liabilities of each retirement or pension fund, health program, and other fringe benefits.
- (3) Request the Governor, the State Treasurer, the State Auditor and any other agency or department head which has information relevant to these committees' study to prepare any reports deemed necessary by the committee.
- (4) Recommend legislation which will insure and maintain sound retirement and pension policy for all funds.
- (5) Analyze each item of proposed pension and retirement legislation in accordance with Article 15 of Chapter 120 of the General Statutes, "The Retirement Systems Actuarial Note Act."
- (6) Study, analyze, and report on related subjects directed to be studied by joint resolution, resolution of either house of the General Assembly, or by direction of the Speaker of the House or President of the Senate. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 3.)

Effect of Amendments. — The 1981 amendment, in the introductory paragraph, substituted "Senate and House Committees on

Pensions and Retirement" for "Joint Committee on Pensions and Retirement."

§ 120-111.3. Analysis of legislation.

Every bill, which creates or modifies any provision for the retirement of public officers or public employees or for the payment of retirement benefits or of pensions to public officers or public employees, shall, upon introduction in either house of the General Assembly, be referred to the Committee on Pensions and Retirement of that house. When the bill is reported out of committee it shall be accompanied by a written report by the Committee on Pensions and Retirement containing, among other matters which the Committee deems relevant, the actuarial note required by Article 15 of Chapter 120 of the General Statutes, and pursuant to the Rules of the General Assembly, and an evaluation of the proposed legislation's actuarial soundness and adherence to sound retirement and pension policy. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 4.)

Effect of Amendments. — The 1981 amendment, in the second sentence, deleted "Joint" preceding "Committee" in two places.

§ 120-111.4. Staff and actuarial assistance.

Upon application of the chairman of the Senate or House Committee on Pensions and Retirement, the Legislative Services Commission shall provide staff, including actuarial assistance, to aid the committee in its work. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 5.)

Effect of Amendments. — The 1981 amendment substituted "Chairman of the Senate or House" for "Cochairmen of the Joint."

Chapter 121.

Archives and History.

Article 1.

General Provisions.

Sec.

121-5. Public records and archives.

121-8. Historic preservation program.

Sec.

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

ARTICLE 1.

General Provisions.

§ 121-1. Short title.

Legal Periodicals. — For an article Faction, Property Rights and Ideology," see 11 entitled, "Preservation Law 1976-1980: N.C. Cent. L.J. 276 (1980).

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

The Department of Cultural Resources shall have the following powers and duties:

- (1) To accept gifts, bequests, devises, and endowments for purposes which fall within the general legal powers and duties of the Department. Unless otherwise specified by the donor or legator, the Department may either expend both the principal and interest of any gift or bequests or may invest such funds in whole or in part, by and with the consent of the State Treasurer.
- (2) To conduct a records management program, including the operation of a records center or centers and a centralized microfilming program, for the benefit of all State agencies, and to give advice and assistance to the public officials and agencies in matters pertaining to the economical and efficient maintenance and preservation of public records.
- (3) To preserve and administer, in the North Carolina State Archives, such public records as may be accepted into its custody, and to collect, preserve, and administer private and unofficial historical records and other documentary materials relating to the history of North Carolina and the territory included therein from the earliest times. The Department shall carefully protect and preserve such materials, file them according to approved archival practices, and permit them, at reasonable times and under the supervision of the Department, to be inspected, examined, or copied: Provided, that any materials placed in the keeping of the Department under special terms or conditions restricting their use shall be made accessible only in accordance with such terms or conditions.
- (4) To have materials on the history of North Carolina properly edited, published as other State printing, and distributed under the direction of the Department. The Department may charge a reasonable price for such publications and devote the revenue arising from such sales to the work of the Department.
- (5) With the cooperation of the Department of Public Education, to develop, conduct, and assist in the coordination of a program for the

better and more adequate teaching of State and local history in the public schools and the institutions of the community college system of North Carolina, including, as appropriate, the preparation and publication of suitable histories of all counties and of other appropriate materials, the distribution of such materials to the public schools and community college system for a reasonable charge, and the coordination of this program throughout the State.

- (6) To maintain and administer the North Carolina Museum of History, to collect and preserve therein important historical and cultural materials, and according to approved museum practices to classify, accession, house, and when feasible exhibit such materials and make them available for study.
- (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.
- (8) In accordance with G.S. 121-9 of this Chapter, to acquire real and personal properties that have statewide historical, architectural, archaeological, or other cultural significance, by gift, purchase, devise, or bequest; to preserve and administer such properties; and, when necessary, to charge reasonable admission fees to such properties. In the acquisition of such property, the Department shall also have the authority to acquire nearby or adjacent property adjacent to properties having statewide significance deemed necessary for the proper use, administration, and protection of historic, architectural, archaeological, or cultural properties, or for the protection of the environment thereof.
- (9) To administer and enforce reasonable rules adopted and promulgated by the Historical Commission for the regulation of the use by the public of such historical, architectural, archaeological, or cultural properties under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and having been filed according to law, shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment not to exceed 30 days.
- (10) To coordinate the objectives of the state-created historical and commemorative commissions with the other policies, objectives, and programs of the Department of Cultural Resources.
- (11) To organize and administer a junior historian program, in cooperation with the Department of Public Education, the public schools, and other agencies or organizations that may be concerned therein.
- (12) With the approval of the Historical Commission, to dispose of any accessioned records, artifacts, and furnishings in the custody of the Department that are determined to have no further use or value for official or administrative purposes or for research and reference purposes.
- (13) To promote and encourage throughout the State knowledge and appreciation of North Carolina history and heritage by encouraging

the people of the State to engage in the preservation and care of archives, historical manuscripts, museum items, and other historical materials; the writing and publication of State and local histories of high standard; the display and interpretation of historical materials; the marking and preservation of historic, architectural, or archaeological structures and sites of great importance; the teaching of North Carolina and local history in the schools and colleges; the appropriate observance of events of importance to the State's history; the publicizing of the State's history through media of public information; and other activities in historical and allied fields.

- (14) With the approval of the Historical Commission, to charge and collect fees not to exceed cost for photographs, photocopies of documents, microfilm and other microforms and other audio or visual reproductions of public records or other documentary materials, objects, artifacts, and research materials; and for the restoration and preservation of documents and other materials important for archival or historical purposes. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; C. S., s. 6142; 1925, c. 275, s. 11; 1943, c. 237; 1945, c. 55; 1955, c. 543, s. 1; 1957, c. 330, s. 1; 1959, c. 68, s. 1; 1971, c. 345, s. 3; 1973, c. 476, s. 48; 1977, c. 464, s. 38; 1981, c. 721.)

Effect of Amendments. — The 1981 amendment added subdivision (14).

§ 121-5. Public records and archives.

(a) **State Archival Agency Designated.** — The Department of Cultural Resources shall be the official archival agency of the State of North Carolina with authority as provided throughout this Chapter and Chapter 132 of the General Statutes of North Carolina in relation to the public records of the State, counties, municipalities, and other subdivisions of government.

(b) **Destruction of Records Regulated.** — No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, mutilates, or destroys it shall be guilty of a misdemeanor and upon conviction fined at the discretion of the court.

When the custodian of any official State records certifies to the Department of Cultural Resources that such records have no further use or value for official and administrative purposes and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, municipality, or other subdivision of government certifies to the Department that such records have no further use or value for official business and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be authorized by the governing body of said county, city, municipality, or other subdivision of government to be destroyed or otherwise disposed of by the agency having custody of them. A record of such certification and authorization shall be entered in the minutes of the governing body granting the authority.

The North Carolina Historical Commission is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of this section. When any State, county, municipal, or other governmental records shall have been destroyed or

otherwise disposed of in accordance with the procedure authorized in this subsection, any liability that the custodian of such records might incur for such destruction or other disposal shall cease and determine.

(c) Assistance to Public Officers. — The Department of Cultural Resources shall have the right to examine into the condition of public records and shall, subject to the availability of staff and funds, give advice and assistance to public officials and agencies in regard to preserving or disposing of the public records in their custody. When requested by the Department of Cultural Resources, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which inventory shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Department of Cultural Resources, establishing a time period for the retention or disposal of each series of records. So long as such approved schedule remains in effect, destruction or disposal of records in accordance with its provisions shall be deemed to have met the requirements of G.S. 121-5(b).

The Department of Cultural Resources is hereby authorized and directed to conduct a program of inventorying, repairing, and microfilming in the counties for security purposes those official records of the several counties which the Department determines have permanent value, and of providing safe storage for microfilm copies of such records. Subject to the availability of funds, such program shall be extended to the records of permanent value of the cities, municipalities, and other subdivisions of government.

(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 ten dollars (\$10.00), 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; 1981, c. 406, ss. 1, 2.)

Effect of Amendments. —

The 1981 amendment repealed the second 1979 amendment (by Session Laws 1979, c. 801) but expressly left the first 1979 amendment (by

Session Laws 1979, c. 361) in effect, thereby substituting a \$10.00 fee for a \$5.00 fee in the last sentence of subsection (d).

§ 121-8. Historic preservation program.

(a) Historic Preservation Agency Designated. — The historic preservation agency of the State of North Carolina shall be the Department of Cultural Resources.

(b) **Surveys of Historic Properties.** — The Department of Cultural Resources shall conduct a continuing statewide survey to identify, document, and record properties having historical, architectural, archaeological, or other cultural significance to the State, its communities, and the nation. Upon approval of the North Carolina Historical Commission, the Secretary or his designee as the State's liaison officer for historic preservation, may nominate appropriate properties for entry in the National Register of Historic Places as established by the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. section 470. The Department of Cultural Resources shall maintain a permanent file containing research reports, descriptions, photographs, and other appropriate documentation relating to properties deemed worthy of inclusion in the statewide survey.

(c) **Statewide Historic Preservation Plan.** — The Department of Cultural Resources shall prepare and revise as needed a State plan for historic preservation, which plan, when approved by the North Carolina Historical Commission, shall constitute official State policy for the preservation, or the encouragement of the preservation, of important historic, architectural, archaeological, and other cultural properties in North Carolina.

(d) **Cooperation with Federal Government.** — The Department of Cultural Resources and/or the Department of Administration may enter into and carry out contracts with the federal government or any agency thereof under which said government or agency grants financial or other assistance to the Department of Cultural Resources to further the purposes of this Chapter. Either of the Departments may agree to and comply with any reasonable conditions not inconsistent with State law which are imposed on such grants. Such grants or other assistance may be accepted from the federal government or an agency thereof and expended whether or not pursuant to a contract.

(e) **Cooperation with Local Governments.** — The Department shall, within the limits of staff and available funds, cooperate with and assist counties, cities, municipalities, and other subdivisions of government, and, where appropriate, private individuals and organizations, in promoting historic preservation to the end that important properties which are not owned by the State may be preserved or encouraged to be preserved. Such cooperation and assistance may include but not be limited to reviewing historic preservation plans, evaluating historic properties, and providing technical, financial and professional assistance. The Department may further enter into and carry out contracts with local governments or their agencies and with any private party to further the purposes of this Article.

(f) **Continuing Programs.** — The Department of Cultural Resources shall develop a continuing program of historical, architectural, archaeological, and cultural research and development to include surveys, excavation, salvage, preservation, scientific recording, interpretation, and publication of the State's historical, architectural, archaeological, and cultural resources. A reasonable charge may be made for publications resulting therefrom and the income from such sales may be devoted to the work of the Department.

(g) **Abandoned Cemeteries.** — The Department of Cultural Resources is authorized to take appropriate measures to record and permanently preserve information of significant historical genealogical or archaeological value when, in the opinion of the Department, any such information located within an abandoned cemetery is in imminent danger of loss or destruction because of the condition or circumstances of the cemetery. The Department may obtain access to any abandoned cemetery for the purpose of recording and preserving information of significant historical, genealogical or archaeological value pursuant to Chapter 15, Article 4A of the General Statutes: Provided, that prior to the requesting of the administrative warrant, the Department shall contact the affected landowners and request their consent for access to their lands for the purpose of gathering such information. If consent is not granted, the

Department shall give reasonable notice of the time, place and before whom the administrative warrant will be requested so that the owner or owners may have an opportunity to be heard. Service of this notice may be in any manner prescribed by N.C.G.S. 1A-1 Rule 4(j). Any measures taken by the Department pursuant to this subsection shall be effected in such a manner as to cause as little inconvenience or disruption as possible to the owners of the land upon which the abandoned cemetery is located and of land necessary to obtain access to the cemetery. (1973, c. 476, s. 48; 1981, c. 215.)

Effect of Amendments. — The 1981 amendment added subsection (g).

§ 121-9. Historic properties.

Legal Periodicals. — For an article entitled, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

§ 121-12. North Carolina Historical Commission.

Legal Periodicals. — For an article entitled, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

ARTICLE 4.

Conservation and Historic Preservation Agreements Act.

§ 121-34. Short title.

Legal Periodicals. — For an article entitled, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

For an article entitled, "Reaffirmation of Local Initiative: North Carolina's 1979 Historic Preservation Legislation," see 11 N.C. Cent. L.J. 243 (1980).

For an article entitled, "Revolving Funds: In the Vanguard of the Preservation Movement," see 11 N.C. Cent. L.J. 256 (1980).

For an article entitled, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

For an article entitled, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

§ 121-35. Definitions.

Legal Periodicals. — For an article entitled, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

For an article entitled, "The North Carolina

Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

§ 121-36. Applicability.

Legal Periodicals. — For an article entitled, "The North Carolina Historic Preservation and Conservation Agreements Act:

Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

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

Legal Periodicals. — For an article entitled, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

For an article entitled, "The North Carolina

Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

§ 121-41. Public recording of agreements.

Legal Periodicals. — For an article entitled, "The North Carolina Historic Preservation and Conservation Agreements Act:

Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

Chapter 122.

Hospitals for the Mentally Disordered.

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122-98.2. Department of Human Resources to operate treatment facility at Butner for emotionally disturbed children.

ARTICLE 1.***Organization and Management.*****§ 122-1. Jurisdiction and authority of Department of Human Resources.****Cross References. —**

For transfer of Butner Public Safety Depart-

ment to Department of Crime Control and Public Safety, see note to § 122-98.

§ 122-1.1A. Definitions.

For the purposes of this Chapter, the following definition applies:

- (1) "Commission" means the Commission for Mental Health, Mental Retardation and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes. (1981, c. 51, s. 2.)

Editor's Note. — Session Laws 1981, c. 51, s. 17, makes the act effective July 1, 1981.

§ 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. 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; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation Services" at the end of the first sentence.

§ 122-3. Authority of Commission and Department of Human Resources as to admission of patients; how commitments made.

The Commission 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; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation Services" in the first sentence.

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

It shall be the duty of the Commission 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; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation 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 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 North Carolina Alcoholic Beverage Control Commission, or may delegate such operation. The Department of Human Resources shall act in an advisory capacity in the operation of these facilities.

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

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

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

(2) It shall be the policy of limiting such grants-in-aid to any community program to a period of two years.

Nothing in this subsection shall be construed to prohibit or limit or encroach upon the operation of community alcoholism programs in existence prior to June 22, 1961. (1949, c. 1206, s. 1; 1961, c. 1173, ss. 1, 2, 4; 1963, c. 1166, ss. 2, 12; 1969, c. 982; 1973, c. 476, ss. 128, 133, 138; 1975, c. 19, s. 41; 1977, c. 679, s. 7; 1981, c. 51, s. 3; c. 412, s. 4.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health and Mental Retardation Services" in the second sentence of subsection (a).

The second 1981 amendment, effective January 1, 1982, substituted "North Carolina Alcoholic Beverage Control Commission" for "State Board of Alcoholic Control" near the end of the third sentence of subsection (a).

§ 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 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; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation Services" in the third sentence.

§ 122-8.1. Disclosure of information, records, etc.

Legal Periodicals. — For survey of 1979 law on evidence, see 58 N.C.L. Rev. 1456 (1980).

§ 122-12. Bylaws and regulations.

The Commission 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; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation Services" near the beginning of the section.

§ 122-13. Transfer of patients from one hospital to another; transfer of funds.

The North Carolina State Commission 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; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation Services" in the first sentence.

§§ 122-16, 122-16.1: Repealed by Session Laws 1981, c. 614, s. 4, effective July 1, 1981.

Cross References. — As to regulations promulgated by the Secretary of Human Resources concerning the department of persons and the use of motor vehicles at State institutions, see §§ 143-116.6 and 143-116.7.

Editor's Note. — Repealed § 122-16 was amended by Session Laws 1981, c. 635, s. 4. Repealed § 122-16.1 was amended by Session Laws 1981, c. 51, s. 3.

ARTICLE 2.

Officers and Employees.

§ 122-33. Appointment of employees as policemen who may arrest without warrant.

The administrator of each mental hospital and each residential center for the mentally retarded and the superintendents of the North Carolina Schools for the Deaf are empowered to appoint such number of discreet employees of their respective hospitals, centers, or school as they may think proper, special policemen, and within the grounds of such hospital, center or school the said employees so appointed policemen shall have all the powers of policemen of incorporated towns. They shall have the right to arrest without warrant persons committing violations of the State law or the ordinances of that hospital, center or school, in their presence, and within the grounds of their hospital, center or school, and carry the offenders before a magistrate who shall proceed as in other criminal cases. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C. S., s. 6181; 1921, c. 207; 1957, c. 1232, s. 12; 1959, c. 1002, s. 12; 1973, c. 108, s. 73; c. 673, s. 12.1; 1981, c. 635, s. 5.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "superintendents" for "superintendent" and

"Schools" for "School" near the beginning of the first sentence of the section.

ARTICLE 2D.

*Community Drug Abuse Programs.***§ 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 governing the operation of community-based drug abuse programs. Failure to comply with these standards, as determined by the Commission, 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. (1971, c. 1123, s. 3; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation Services" throughout the section.

ARTICLE 2F.

Area Mental Health, Mental Retardation, and Substance Abuse (Alcohol and Drug Abuse) Programs.

Cross References. — As to review and evaluation of the programs and functions authorized under this Article, see § 143-34.26.

Part 1. Policy Statement; Definitions.

§ 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 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) **Repealed by Session Laws 1981, c. 51, s. 4, effective July 1, 1981.**
- (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 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 as provided in this Article. 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; 1981, c. 51, ss. 3, 4; c. 539, s. 1.)

Effect of Amendments. —

The first 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health and Mental Retardation Services" in subdivisions (1) and (9) and deleted subdivision (5), which defined the

Commission for Mental Health and Mental Retardation Services.

The second 1981 amendment, effective July 1, 1981, added "as provided in this Article" at the end of the first sentence of subdivision (10).

**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. 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; 1981, c. 51, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for

Mental Health and Mental Retardation Services" at the end of the first sentence.

§ 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 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; 1981, c. 51, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for

Mental Health and Mental Retardation Services" in subsection (a).

§ 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 one person each representing the interests of or from citizens' organizations representing the interests of persons with:
 - a. Mental illness
 - b. Mental retardation
 - c. Alcoholism, and
 - d. Drug abuse;
- (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; 1981, c. 52.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, rewrote subdivision (b)(4), which formerly read: "At least three representatives from local citi-

zen organizations to include one each from those active in areas of substance abuse, mental health, and mental retardation."

§ 122-35.40B. Liability insurance and waiver of immunity as to torts of agents, employees and board members.

(a) Any area mental health, mental retardation and substance abuse authority, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent, employee or board member of such area mental health, mental retardation and substance abuse authority when acting within the scope of his authority or within the course of his duties or employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said authority is indemnified by insurance for such negligence or tort.

(b) Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State and must by its terms adequately insure the area mental health, mental retardation and substance abuse authority against any and all liability for any damages by reason of death or injury to a person or property proximately caused by the negligent acts or torts of the agents, employees and board members of said authority when acting within the course of their duties or employment. The area mental health, mental retardation and substance abuse board shall determine the extent of liability and what agents, employees by class and board members shall be covered by any insurance purchased pursuant to this subsection. Any company or corporation which enters into a contract of insurance as above described with such authority, by such act waives any defense based upon the governmental immunity of such authority.

(c) Any persons sustaining damages, or in the case of death, his personal representative may sue an authority insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in a county located within the geographic limits of the authority; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of governmental, municipal or discretionary function of such authority if, and to the extent, such authority has insurance coverage as provided by this section.

(d) Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any such authority of any defense whatsoever to any such action for damages or to restrict, limit, or otherwise affect any such defense which said authority may have at common law or by virtue of any statute and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said authority or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

(e) Such authority may incur liability pursuant to this section only with respect to a claim arising after such authority has procured liability insurance pursuant to this section and during the time when such insurance is in force.

(f) No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect to insurance. (1981, c. 539, s. 2.)

Editor's Note. — Session Laws 1981, c. 539, s. 5, makes the act effective July 1, 1981.

§ 122-35.40C. Defense of agents, employees and board members.

(a) Upon request made by or in behalf of any agent, employee or board member or former agent, employee or board member of the area mental health, mental retardation and substance abuse authority, any such authority may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee or board member of the authority. The defense may be provided by the local board by employing counsel or by purchasing insurance which requires that the insurer provide the defense. Nothing in this section shall be deemed to require any such authority to provide for the defense of any action or proceeding of any nature.

(b) Any such authority may budget funds for the purpose of paying all or part of the claim made or any civil judgment entered against any of its agents, employees or board members or former agents, employees or board members when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee or board member of such authority. Nothing in this section shall authorize any authority to budget funds for the purpose of paying any claim made or civil judgment against any of its agents, employees or board members, or former agents, employees or board members, if the authority finds that such agent, employee or board member acted or failed to act because of actual fraud, corruption or actual malice on his part. Any authority may budget for and purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section shall be deemed to require any authority to pay any claim or judgment referred to herein, and the purchase of insurance coverage for payment of such claim or judgment shall not be deemed an assumption of any liability not covered by such insurance contract, and shall not be deemed an assumption of liability or payment of any claim or judgment in excess of the limits of coverage in such insurance contract.

(c) Subsection (b) of this section shall not authorize any authority to pay all or part of a claim made or civil judgment entered or to provide a defense to a criminal charge unless (i) notice of the claim or litigation is given to the authority prior to the time that the claim is settled or civil judgment is entered and (ii) the authority shall have adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against agents, employees or board members or former agents, employees or board members shall be defended or paid.

(d) The board or boards of county commissioners which establish the area mental health, mental retardation and substance abuse authority and the Secretary of the Department of Human Resources are hereby authorized to allocate funds not otherwise restricted by law, in addition to the funds allocated for the operation of the program, for the purpose of paying legal defense, judgments and settlements under the provisions of this section. (1981, c. 539, s. 2.)

Editor's Note. — Session Laws 1981, c. 539, s. 5, makes the act effective July 1, 1981.

§ 122-35.40D. Application of §§ 122-35.40B and 122-35.40C.

The provisions of G.S. 122-35.40B and 122-35.40C shall apply to both single county and multi-county area mental health, mental retardation and substance abuse authorities. (1981, c. 539, s. 4.)

Editor's Note. — Session Laws 1981, c. 539, s. 5, makes the act effective July 1, 1981.

§ 122-35.41. Designation of the Commission to set standards for services.

Standards for services not covered under the provision of this Article may be prescribed by the Commission. 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 Secretary of Human Resources. The Secretary or his designee shall conduct an appeal in accordance with Chapter 150A and present a proposal for decision to the Commission for Mental Health and Mental Retardation and Substance Abuse Services, which shall have the authority to make the final agency decision. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 7; 1981, c. 51, s. 3; c. 614, s. 7.)

Effect of Amendments. —

The first 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health and Mental Retardation Services" in the first sentence and in the fourth sentence as it stood before the second 1981 amendment.

The second 1981 amendment, effective July

1, 1981, substituted "Secretary of Human Resources" for "Commission for Mental Health and Mental Retardation Services based upon catchment area needs" at the end of the fourth sentence, and substituted the present fifth sentence for a former fifth sentence which read "Such appeal shall be made pursuant to the procedure set forth in G.S. 122-35.52."

Part 3. Responsibilities of Area Mental Health, Mental Retardation, and Substance Abuse Authorities.**§ 122-35.43. Submit application for service program; annual plan.**

(a) Subject to the standards of the Commission, 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; 1981, c. 51, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for

Mental Health and Mental Retardation Services" near the beginning of subsection (a).

§ 122-35.45. Personnel.

(a) Technical and Professional Standards. — Subject to the standards of the Commission, 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, 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. 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; 1981, c. 51, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for

Mental Health and Mental Retardation Services" throughout the section.

§ 122-35.49. Contract for services; claims against providers.

(a) 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. 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.

(b) The area authority may also provide the other public or private agencies, institutions or resources with funds to purchase liability insurance, to provide legal representation and to pay any claim with respect to liability for acts, omissions or decisions by members of the boards or employees of the agencies, institutions and resources with whom the area authority contracts; provided, that the acts, omissions and decisions must arise out of the performance of the contract and must not result from actual fraud, corruption or actual malice on the part of the board members or employees. The provisions of G.S. 122-35.40B and 122-35.40C shall apply to both single county and multi-county area mental health, mental retardation and substance abuse authorities. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4.)

Effect of Amendments. —

The first 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health and Mental Retardation Services" in the first sentence.

The second 1981 amendment, effective July 1, 1981, designated the former section as subsection (a) and added subsection (b).

§ 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 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; 1981, c. 51, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for

Mental Health and Mental Retardation Services" near the middle 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, 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; 1981, c. 51, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for

Mental Health and Mental Retardation Services" in the second sentence.

§ 122-35.52. Appeal from the denial or revocation of a license.

An area mental health facility whose license is revoked or whose license application is denied by the Department shall first be given 60 days' written notice specifying the grounds for such revocation or denial. The area mental health, 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. 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; 1981, c. 51, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for

Mental Health and Mental Retardation Services" at the end 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. 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; 1981, c. 51, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for

Mental Health and Mental Retardation Services" at the end of the first sentence of subsection (g).

§ 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. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 25; 1981, c. 51, s. 3.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for

Mental Health and Mental Retardation Services" at the end of the section.

ARTICLE 3.

Admission of Patients; General Provisions; Patients' Rights.

Part 1. Admission of Patients; General Provisions.

§ 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 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; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation Services" near the beginning of the last sentence of the section.

§ 122-43. Fees for examination; payment.

CASE NOTES

Cited in *Hall v. Piedmont Publishing Co.*, 46 N.C. App. 760, 266 S.E.2d 397 (1980).

Part 2. Patients' Rights.

§ 122-55.1. Declaration of policy on patients' rights.

Legal Periodicals. — For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

§ 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 medical treatment, emergency medical evaluation, or 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. When a patient is transferred to another facility solely for medical reasons, the patient shall be returned to the original facility when the medical care is completed. (1973, c. 475, s. 1; c. 1436, ss. 6, 7; 1981, c. 328, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment, in the second paragraph, inserted "medical treatment, emergency medical evaluation,

or emergency" in the sixth sentence and added the last sentence.

§ 122-55.8. Assurance for continuity of care for persons with mental retardation.

(a) Any person with mental retardation admitted for residential care or treatment to any 24-hour residential facility, operated under the authority of this Chapter and supported all or in part by State appropriated funds, for other than respite or emergency care shall have the right to residential placement in an alternative facility if the person is in need of placement and if the original facility can no longer provide the care or treatment.

(b) The area mental health, mental retardation and substance abuse authority which serves the county of residence of the person is responsible for the coordination of the placement.

(c) The Department of Human Resources is responsible for coordinative and financial assistance to the area authority in assuring this continuity of care. (1981, c. 1012.)

ARTICLE 4.

Voluntary Admission.

§ 122-56.3. Procedure for voluntary admissions.

Legal Periodicals. — For an article entitled "Civil Commitment of Minors: Due and Undue Process," see 58 N.C.L. Rev. 1133 (1980).

For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

§ 122-56.5. Representation of minors and persons adjudicated non compos mentis.

Legal Periodicals. — For an article entitled "Civil Commitment of Minors: Due and Undue Process," see 58 N.C.L. Rev. 1133 (1980).

§ 122-56.7. Judicial determination.

Legal Periodicals. — For an article entitled "Civil Commitment of Minors: Due and Undue Process," see 58 N.C.L. Rev. 1133 (1980).

OPINIONS OF ATTORNEY GENERAL

Following Admission of Minor Child to Treatment Facility only the Court or the Facility May Release the Minor. — Pursuant to the current provisions of this section, parents who have applied for admission of their minor child to a treatment facility may not later on obtain a discharge of the child prior to judicial determination of the need for further treatment

at the treatment facility. Only the court or the treatment facility may release the minor child and only then upon determination that the child does not need further hospitalization. See opinion of Attorney General to Mary B. Chamblee, Assistant Public Defender, 26th Judicial District, 49 N.C.A.G. 166 (1980).

§ 122-56.10. Voluntary admission of inmates from the Department of Correction to Regional Mental Health Facilities.

Legal Periodicals. — For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

ARTICLE 5A.***Involuntary Commitment.*****§ 122-58.1. Declaration of policy.**

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Requirements for Entering Commitment Order. — To enter a commitment order, the trial court is required to ultimately find two distinct facts, i.e., that the respondent is

mentally ill and is dangerous to himself or to others. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

§ 122-58.2. Definitions.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Statutory language establishes a two prong test for dangerousness to self. The first prong addresses self-care ability regarding one's daily affairs. The second prong, which also must be satisfied for involuntary commitment to result, mandates a specific finding of a probability of serious physical debilitation resulting from the more general finding of lack of self-caring ability. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

Unusual eating habits alone do not amount to danger as contemplated in this statute. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

Trial court must find three elements present in order to find that respondent is dangerous to others: (1) within the recent

past (2) respondent has (a) inflicted serious bodily harm on another, or (b) attempted to inflict serious bodily harm on another, or (c) threatened to inflict serious bodily harm on another, or (d) has acted in such a manner as to create a substantial risk of serious bodily harm to another, and (3) there is a reasonable probability that such conduct will be repeated. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

Present statutory definition of "dangerous to others" does not require a finding of overt acts. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

Applied in In re Collins, 49 N.C. App. 243, 271 S.E.2d 84 (1980); In re Frick, 49 N.C. App. 273, 271 S.E.2d 84 (1980).

§ 122-58.3. Affidavit and petition before clerk or magistrate; custody order.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Requirements of this section must be followed diligently. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

Contents and Sufficiency of Affidavit. — The affidavit must set out facts upon which the

affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

§ 122-58.4. Duties of law-enforcement officer; examination by qualified physician.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 122-58.6. Treatment and release pending hearing.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 122-58.7. District court hearing.

CASE NOTES

The North Carolina 10-day, etc. — In accord with 1st paragraph in original. See

In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

Findings Prerequisite to Commitment. —

In accord with 1st paragraph in original. See *In re Monroe*, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

To enter a commitment order, the trial court is required to ultimately find two distinct facts, i.e., that the respondent is mentally ill and is dangerous to himself or to others. *In re Collins*, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

Trial court must find three elements present in order to find that respondent is dangerous to others: (1) within the recent past (2) respondent has (a) inflicted serious bodily harm on another, or (b) attempted to inflict serious bodily harm on another, or (c) threatened to inflict serious bodily harm on another, or (d) has acted in such a manner as to create a substantial risk of serious bodily harm to another, and (3) there is a reasonable probability that such conduct will be repeated. *In re Monroe*, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

No Overt Act Required. —

The present statutory definition of "dangerous to others" does not require a finding of overt acts. *In re Monroe*, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

It is for the trier of fact to, etc. —

In accord with original. See *In re Monroe*, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

The Court of Appeals does not consider whether the evidence of respondent's mental illness and dangerousness was clear, cogent and convincing. It is for the trier of fact to determine whether the competent evidence offered in a particular case met the burden of proof. *In re Collins*, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

In its order the trial court must record the facts upon which its ultimate findings are based. *In re Collins*, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

Standards of review. —

In accord with original. See *In re Frick*, 49 N.C. App. 273, 271 S.E.2d 84 (1980).

On appeal of a commitment order, the function of the Court of Appeals is to determine whether there was any competent evidence to support the facts recorded in the commitment order and whether the trial court's ultimate findings of mental illness and dangerous to self or others were supported by the facts recorded in the order. *In re Collins*, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

Applied in *In re Rogers*, 300 N.C. 747, 268 S.E.2d 221 (1980).

§ 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.

(c) Upon the motion of any interested party, the venue of the rehearing required by G.S. 122-58.13(b) shall be moved to the county of the original commitment when the convenience of witnesses and the ends of justice would be promoted by the change, or when the judge has, at any time, been interested as party or counsel. (1975, 2nd Sess., c. 983, s. 133; 1981, c. 537, s. 6.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added subsection (c).

§ 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. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so indicate. 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; 1981, c. 537, s. 1.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, in subsection (b), added the second sentence.

Legal Periodicals. —

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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. If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found not guilty by reason of insanity or incapable of proceeding, the clerk shall also notify the chief district court judge, the clerk of superior court, and the district attorney in the county in which the respondent was found not guilty by reason of insanity or incompetent to proceed, of the time and place of the hearing.

(a1) Fifteen days before the end of the initial treatment period of a respondent who was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and such person having been found not guilty by reason of insanity or incapable of proceeding, if the chief of medical services of the inpatient facility determines that treatment of the respondent beyond the initial period will not be necessary, he shall so notify the clerk of superior court for the scheduling of a rehearing as provided in G.S. 122-58.13(b).

(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. No recommitment ordered shall be for a period 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; 1981, c. 537, ss. 2-4.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added the third sentence of subsection (a), added subsection (a1), and, in subsection (e), substituted the present last sentence for the former last sentence, which read: "Any recommitment ordered shall be for only such period of time as con-

tinued treatment is deemed necessary by the chief of medical services of the treatment facility, but in no event longer than one year."

Legal Periodicals. — For an article entitled "Civil Commitment of Minors: Due and Undue Process," see 58 N.C.L. Rev. 1133 (1980).

§ 122-58.13. Release and conditional release; judicial review.

(a) Except as provided in subsection (b), 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. Except as provided in subsection (b), 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 to the clerk of superior court of the county of commitment and of the county in which the facility is located.

(b) If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found not guilty by reason of insanity or incapable of proceeding, 15 days before the respondent's discharge or conditional release the chief of medical services of a public or private mental health facility shall notify the clerk of superior court of the county in which the facility is located of his determination that the respondent is no longer in need of hospitalization. The clerk must then schedule a rehearing to determine the appropriateness of respondent's release under the standards of commitment set forth in G.S. 122-58.8. The clerk shall give notice as provided in G.S. 122-58.11(a). The district attorney of the district where respondent was found not guilty by reason of insanity or incapable of proceeding may represent the State's interest at the hearing. (1973, c. 726, s. 1; c. 1408, s. 1; 1981, c. 537, s. 5.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, designated the former section as subsection (a) and added subsection (b). Within subsection (a), the amend-

ment inserted "Except as provided in subsection (b)," at the beginning of the first and second sentences, and made other minor changes.

§ 122-58.18. Special emergency procedure for violent persons.

CASE NOTES

Section is not intended to be used indiscriminately and clearly defines the limited time and circumstances for such use. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

Affidavit. — The affidavit must set out facts upon which the affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

May Rely on Information Gained from Others. — An officer's petition for involuntary commitment of respondent pursuant to the

emergency procedures for violent persons was not required to be dismissed because the officer did not personally observe the respondent in an act of violence but relied on information gained from others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

No Overt Act Required. — In finding one to be imminently dangerous, there is no requirement of an overt act. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

Concealing a potentially dangerous weapon is evidence of imminent danger. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

§ 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 any place in Orange County where district court can be held under G.S. 7A-133, 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; 1981, c. 442.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, in the last sentence of the second paragraph, substituted "or at any

place in Orange County where district court can be held under G.S. 7A-133" for "or at the Orange County Courthouse."

§ 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 alcoholic beverages, or uses alcoholic beverages 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. The judicial determination that the respondent is an alcoholic in need of care shall be based on clear, cogent and convincing evidence.

(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.

(g) The director of a public or private alcoholism treatment facility shall discharge a committed respondent unconditionally at any time he determines that the respondent is no longer in need of care. Notice of discharge shall be furnished to the clerk of superior court of the county of commitment and the county in which the facility is located. (1977, 2nd Sess., c. 1134, s. 4; 1979, c. 358, s. 27; 1981, c. 412, s. 4; c. 519, ss. 3, 4; c. 747, s. 66.)

Effect of Amendments.

Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, substituted "alcoholic beverages" for "intoxicating liquor," effective January 1, 1982, in two places in the second sentence of subsection (a).

The 1981 amendment, by c. 519, ss. 3, 4, effective July 1, 1981, added the last sentence of subsection (a), and added subsection (g).

§ 122-58.27. Housing responsibility for certain residents in or escapees from involuntary commitment.

(a) Any individual who has been involuntarily committed under the provisions of this Article to a mental health facility designated or licensed by the Department of Human Resources:

- (1) Who escapes from or is absent without authorization from the facility prior to being discharged; and
- (2) Who is charged with a criminal offense committed after the escape or during the unauthorized absence; and
- (3) Whose involuntary commitment is determined to be still valid by the judge or judicial officer who would make the pretrial release determination regarding the criminal offense under the provisions of G.S. 15A-533 and 15A-534; or
- (4) Who is charged with committing a crime while still residing in the facility and whose commitment is still valid as prescribed by subdivision (3) of this section;

shall be denied pretrial release pursuant to G.S. 15A-533 and 15A-534. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) Absent findings of lack of mental responsibility for his criminal offense or lack of competency to stand trial for the criminal offense, the involuntary commitment of an individual as described in subsection (a) shall not be utilized in lieu of nor shall it constitute a bar to proceeding to trial for the criminal offense. At any time that the district court, acting under the provisions of G.S. 122-58.7 and 122-58.8, or 122-58.11, or the chief of medical services of the mental health facility, acting under the provisions of G.S. 122-58.13, finds that the individual should be unconditionally discharged, committed for outpatient treatment, or conditionally released, the mental health facility shall notify the clerk of superior court in the county in which the criminal charge is pending prior to effecting the change in status. At this time, a pretrial release determination pursuant to the provisions of G.S. 15A-533 and 15A-534 shall be made. In this event, arrangements for returning the individual for the pretrial release determination shall be the responsibility of the clerk of superior court.

(c) An individual who has been processed in accordance with subsections (a) and (b) of this section may not later be returned to a mental health facility prior to trial except pursuant to involuntary commitment proceedings by the district court in accordance with the preceding sections of this Article or after proceedings in accordance with the provisions of G.S. 15A-1002 or 15A-1321. (1981, c. 936, s. 1.)

Editor's Note. — Session Laws 1981, c. 936, s. 3, provides: "This act shall become effective

October 1, 1981, and applies to persons alleged to have committed crimes on or after this date."

ARTICLE 7B.

*Public Intoxication.***§ 122-65.11. Assistance to person who is intoxicated in public; procedure for commitment to shelter or treatment facility.**

(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) The procedures for commitment of an alcoholic in need of care under the provisions of this Article are as follows:

- (1) Any person who has knowledge that a person assisted to a shelter or treatment facility under subdivisions (a)(3) or (a)(4) of this section is an alcoholic in need of care as defined by G.S. 122-58.22 or G.S. 122-58.23 may appear before a clerk 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 that the person be 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 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 county in which the clerk or magistrate holds office.
- (2) If the clerk or magistrate finds reasonable grounds to believe the facts as alleged in the affidavit are true and that the respondent is an alcoholic in need of care, he may issue an order to a law enforcement officer that the respondent remain in the shelter or treatment facility until he can appear before a district court judge to determine if he is an alcoholic in need of care.

- (3) 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) of this section or at any other facility approved for this purpose by the Department of Human Resources. If the jail was used as a shelter-care facility under (a)(3) of this section and G.S. 122-65.13, the respondent must be ordered to be taken to a facility approved by the Department of Human Resources for this purpose.
- (4) The respondent may be detained no more than 10 days for this purpose, and if a hearing is not held within 10 days after the respondent is taken into custody, the respondent shall be released.
- (5) Pending the district court hearing the qualified physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards.
- (6) 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.
- (7) 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 the proper disposition for the person if he is found to be an alcoholic in need of care. (1977, 2nd Sess., c. 1134, s. 2; 1981, c. 519, s. 5.)

Cross References. — For provisions that § 15A-504, concerning return of person released after magistrate's finding of no probable cause for warrantless arrest, does not

supersede this section, see § 15A-504(c).

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote subsection (d).

CASE NOTES

Those who are intoxicated but not arrested. *State v. Cooke*, 49 N.C. App. 384, 271 disruptive may be assisted but not S.E.2d 561 (1980).

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 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 may adopt. (1963, c. 1184, s. 6; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation Services" in the second and third sentences.

§ 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 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; 1981, c. 51, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health

and Mental Retardation Services" in the second sentence of the section.

ARTICLE 10.

Private Hospitals for the Mentally Disordered.

§ 122-72. Licensing and control of private mental institutions and homes.

(a) It shall be unlawful for any person or corporation to establish or maintain a private hospital, home or school for the cure, treatment or rehabilitation of mentally ill persons, mentally retarded, or inebriates without having a license therefor from the Department of Human Resources. Any person who carries on, conducts or attempts to carry on or conduct a private hospital, home or school for the cure, treatment or rehabilitation of mentally ill persons, mentally retarded, or inebriates without having a license therefor from the Department of Human Resources shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than six months, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this section shall be liable under the provisions of this section in the same manner and to the same extent as a private individual violating the law.

(b) 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 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 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 willful violation of the rules and regulations of the Commission.

(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. (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; 1981, c. 51, s. 3.)

Cross References. — As to review and evaluation of the programs and functions authorized under this section, see § 143-34.26.

Repeal of Section. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this section effective July 31, 1981, was itself repealed by

Session Laws 1981, c. 932, s. 1.

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "Commission for Mental Health and Mental Retardation Services" throughout the section.

§ 122-81.2. Involuntary commitment to a private hospital.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

ARTICLE 12.

John Umstead Hospital.

§ 122-96. Recordation of ordinances and regulations; printing and distribution.

All ordinances, rules and regulations promulgated under this Article shall be filed and made available in accordance with Chapter 150A, known as the Administrative Procedure Act. (1949, c. 71, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 614, s. 6.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "promulgated under" for "adopted pursuant to the authority of," deleted "shall be recorded in the

proceedings of the North Carolina Department of Human Resources and printed copies" following "this Article," and at the end of the section substituted the language beginning "and made

available" for "in the office of the Secretary of State, and available for distribution to persons requesting the same."

§ 122-98. Butner public safety department.

(a) The Secretary of Crime Control and Public Safety is authorized to employ special police officers for the territory embraced by the John Umstead Hospital site and any property adjacent to that site which is owned or leased by the Department of Human Resources or any other agency of the State. The territorial jurisdiction of these special police officers shall also include any property formerly a part of the original Camp Butner reservation, including: (i) both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the State; (ii) any property adjacent to that site that is owned or leased by the State or any political subdivision of the State; and (iii) any adjoining property. The Secretary of Crime Control and Public Safety may organize these special police officers into a public safety department for that property and may locate that department within the principal department as permitted by the Executive Organization Act of 1973.

(b) After taking the oath of office required for law-enforcement officers, the special police officers authorized by this section shall have the authority of deputy sheriffs of Durham and Granville counties in those counties respectively. Within the territorial jurisdiction stated in subsection (a), the special police officers shall have the primary responsibility to enforce the laws of North Carolina and any ordinance or regulation applicable to that territory adopted under authority of this Article or under G.S. 122-16 or G.S. 122-16.1 or under the authority granted any other agency of the State and shall also have the powers set forth for firemen in Articles 3, 5 and 6 of Chapter 69. All law enforcement, fire fighting, public safety and other emergency vehicles of the Department of Crime Control and Public Safety shall be maintained and controlled by the State Highway Patrol Division of that Department. Any civil or criminal process to be served on any person confined at any State facility within the territorial jurisdiction stated in subsection (a) shall be forwarded by the sheriff of the county in which the process originated to the Chief of the Butner Public Safety Department. Such process shall be served by a special police officer authorized by this section. The Secretary of Crime Control and Public Safety shall collect from the Clerk of Court of the county in which the process originated the uniform fee collected for such process under Chapter 7A and transmit such sums collected to the General Fund. (1949, c. 71, s. 6; 1955, c. 887, s. 1; 1959, c. 35; c. 1028, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 491, s. 1; c. 964, s. 19; c. 1127, s. 49.)

Editor's Note. — Sections 122-16 and 122-16.1, referred to in this section, were repealed by Session Laws 1981, c. 614, s. 4.

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, rewrote this section.

The second 1981 amendment rewrote the second sentence of subsection (a) and added the last sentence to subsection (b) in this section as rewritten by Session Laws 1981, c. 491, s. 1.

The third 1981 amendment rewrote subsection (b) as rewritten by the first 1981 amendment.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

State Government Reorganization. — Session Laws 1981, c. 491, s. 2, provides: "The Butner Public Safety Department is transferred by a type I transfer, as defined in G.S. 143A-6, from the Department of Human Resources to the Department of Crime Control and Public Safety. All transfers of personnel, equipment, appropriations, and functions shall be completed by September 1, 1981, but the Secretary of Crime Control and Public Safety shall have authority over the personnel, equipment, appropriations, and functions transferred by this section upon the effective date of this act [July 1, 1981]."

ARTICLE 12A.

*Facilities for Treatment and Education of
Emotionally Disturbed Children.***§ 122-98.2. Department of Human Resources to operate
treatment facility at Butner for emotionally
disturbed children.**

The Department of Human Resources is authorized to operate the treatment facility located in Butner, N.C., for emotionally disturbed children. The procedures prescribed by Article 4 of this Chapter shall be utilized in admitting children to treatment facilities under the authorization of this section. (1981, c. 77.)

Chapter 122A.

North Carolina Housing Finance Agency.

Sec.

- 122A-3. Definitions.
 122A-4. North Carolina Housing Finance Agency.
 122A-5. General powers.

Sec.

- 122A-5.5. Rehabilitation Loan Authority.
 122A-8. Bonds and notes.
 122A-16. Oversight by committees of General Assembly; annual reports.

§ 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" mean the bonds or the bond anticipation notes or construction loan 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, without limitation, a mortgage loan to finance, either temporarily or permanently, the construction, rehabilitation or improvement of residential housing and 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;
- (17) "Rehabilitation" means the renovation or improvement of residential housing by the owner of said residential housing. (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; 1979, 2nd Sess., c. 1238, s. 1; 1981, c. 344, s. 1.)

Effect of Amendments. —

The 1981 amendment added subdivision (17).

§ 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 13 members. 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 12 members of the Board shall then elect a thirteenth 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 exercise all of its prescribed statutory powers independently of any principal State Department except as described in this Chapter. The Executive Director of the Agency shall be appointed by the Board of Directors, subject to approval by the Governor. All staff and employees of the Agency shall be appointed by the Executive Director, subject to approval by the Board of Directors; shall be eligible for participation in the State Employees' Retirement System; and shall be exempt from the provisions of the State Personnel Act; provided, however, that the Executive Director shall, on or before January 15 of each year, subject to the approval of the Board of Directors, designate those employees of the Agency which are employed in secretarial, clerical or administrative positions. All employees designated as secretarial, clerical or administrative shall be compensated in accordance with the salary schedules adopted pursuant to the State Personnel Act. The Board of Directors shall set the salary of the Executive Director and all other staff and employees of the Agency whose positions are not designated as secretarial, clerical or administrative, subject to prior approval by the Advisory Budget Commission. The salary of the Executive Director and all staff and employees of the Agency shall not be subject to any limitations imposed pursuant to any salary schedule adopted pursuant to the terms of the State Personnel Act. The Board of Directors shall, subject to the approval of the Governor, elect 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. The books and records of the Agency shall be maintained by the Agency and shall be subject to periodic review and 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; 1981, c. 895, s. 2.)

Cross References. — For state personnel system, see Chapter 126.

Effect of Amendments. — The 1981 amendment substituted "13" for "14" in the second sentence, deleted the former third sentence, which read: "One member shall be the Secretary of the Department of Natural Resources and Community Development serving ex officio," substituted "12" for "13" and "thirteenth" for "fourteenth" in the eleventh sentence, and substituted the last eight sentences of the first paragraph for the former last three sentences of the first paragraph, which read: "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."

State Government Reorganization. —

Session Laws 1981, c. 895, s. 1, provides: The North Carolina Housing Finance Agency is transferred to the Office of State Budget and Management; this transfer shall be neither a Type I nor Type II transfer as defined by G.S. 143A-6; the purpose of this transfer is to permit the board of directors of the North Carolina Housing Finance Agency to exercise the powers granted to the agency by Chapter 122A of the General Statutes and all management functions of the agency, as defined by G.S. 143A-6(c), independently of the direction, supervision or control of the Office of State Budget and Management; provided, however, that the agency shall be subject to the management functions of reporting and budgeting, as defined by G.S. 143A-6 to the extent that the agency shall submit its budgets and reported expenditures to the Office of State Budget and Management in accordance with the provisions of the Executive Budget Act and shall receive any monies appropriated to the agency by the General Assembly through appropriations to the Office of State Budget and Management which are designated for use by the agency.

§ 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 establish and maintain an office for the transaction of its business in the City of Raleigh and at such place or places as the board of directors deems advisable or necessary in carrying out the purposes of this Chapter; provided, however, that the Agency shall comply with the provisions of Articles 6 and 7 of Chapter 146 of the General Statutes governing the acquisition of office space;
- (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; 1981, c. 895, s. 3.)

Effect of Amendments. — The 1981 amendment substituted the present provisions of subdivision (18) for the former provisions, which read: "To maintain an office in the City of Raleigh and at such other place or places as it may determine."

§ 122A-5.5. Rehabilitation Loan Authority.

(a) In order to effectuate the authority of the Agency to participate in commitments to purchase and to purchase mortgage loans for the rehabilitation of existing residential housing the Agency is hereby empowered to adopt, modify or repeal rules and regulations governing the making or participation in the making of mortgage loans and the purchase or participation in commitments for the purchase of mortgage loans for the rehabilitation of existing residential housing.

(b) The rules and regulations of the Agency adopted pursuant to this section shall provide at a minimum that:

- (1) Rehabilitation mortgage loans shall be for the purpose of owner-financed improvements to or renovation of residential housing;
- (2) Requirements for eligibility for rehabilitation mortgage loans shall be consistent with all applicable federal laws and regulations governing bonds for rehabilitation mortgage loans in order to insure that such bonds are exempt from taxation. (1981, c. 344, s. 2.)

§ 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. The Agency also is hereby authorized to provide for the issuance, at one time or from time to time of (i) bond anticipation notes in anticipation of the issuance of such bonds and (ii) construction loan notes to finance the making or purchase of mortgage loans to sponsors of residential housing for the construction, rehabilitation or improvement of residential housing; provided, however, that the total amount of bonds, bond anticipation notes and construction loan notes outstanding at any one time shall not exceed seven hundred fifty million dollars (\$750,000,000) 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 43 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; 1979, 2nd Sess., c. 1238, s. 2; 1981, c. 343.)

Effect of Amendments. —

The 1981 amendment substituted "43 years"

for "40 years" in the seventh sentence of the first paragraph.

§ 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, the Office of State Budget and Management, 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; 1981, c. 895, s. 4.)

Effect of Amendments. — The 1981 amendment, in the second sentence, substituted "The Office of State Budget and Management" for

"Secretary of the Department of Natural Resources and Community Development."

Chapter 123. Impeachment.

ARTICLE 1.

The Court.

§ 123-5. Causes for impeachment.

Legal Periodicals. — For an article from Office in North Carolina," see 16 Wake
entitled, "Removing Local Elected Officials Forest L. Rev. 547 (1980).

Chapter 125.

Libraries.

Article 1.

State Library Agency.

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:

- (1) To adopt a seal for use in official business.
- (2) To make to the Governor a biennial report of its activities and needs, including recommendations for improving its services to the State, to be transmitted by the Governor to the General Assembly.
- (3) To accept gifts, bequests and endowments for the purposes which fall within the general legal powers and duties of the Department of Cultural Resources. Unless otherwise specified by the donor or legator, the Department of Cultural Resources may either expend both the principal and interest of any gift or bequest or may invest such sums in whole or in part, by and with the consent of the State Treasurer, in securities in which sinking funds may be invested under the provisions of G.S. 142-34.
- (4) To purchase and maintain a general collection of books, periodicals, newspapers, maps, films and audiovisual materials, and other materials for the use of the people of the State as a means for the general promotion of knowledge within the State. The scope of the Library's collections shall be determined by the Secretary of Cultural Resources upon consideration of the recommendation of the State Library Commission; and in making these decisions, the Secretary shall take into account the book collections of public libraries and college and university libraries throughout the State and the availability of such collections to the general public. All materials owned by the State Library shall be available for free circulation to public libraries and to all citizens of the State under rules and regulations fixed by the Librarian, except that the Librarian may restrict the circulation of books and other materials which, because they are rare or are used intensively in the Library for reference purposes or for other good reasons, should be retained in the Library at all times.
- (5) To give assistance, advice and counsel to other State agencies maintaining special reference collections as to the best means of establishing and administering such libraries and collections, and to establish in the State Library a union catalogue of all books, pamphlets and other materials owned and used for reference purposes by all other State agencies in Raleigh and of all books, pamphlets and other materials maintained by public libraries in the State which are of interest to the people of the whole State. Where practical, the State Library may maintain a union catalogue of a part or all of the book collections in the Supreme Court Library, the North Carolina State

College Library, and other libraries in the State for the use and convenience of patrons of the State Library.

- (6) To fix reasonable penalties for damage to or failure to return any book, periodical or other material owned by the Department of Cultural Resources, or for violation of any rule or regulation concerning the use of books, periodicals, and other materials in the custody of the Department of Cultural Resources.
- (7) To maintain at least two sets of the laws and journals of the General Assembly for the use of members of the General Assembly while in session. Before each session of the General Assembly the Librarian shall have these and other requested materials moved into the Senate and House chambers for the use of members of the General Assembly.
- (8) To give assistance, advice and counsel to all libraries in the State, to all communities which may propose to establish libraries, and to all persons interested in public libraries, as to the best means of establishing and administering such libraries, as to the selection of books, cataloguing, maintenance and other details of library management.
- (9) To enter into contracts with library agencies of other states for providing library service for the blind in this State and other states, provided adequate compensation is paid for such service and such contract is otherwise deemed advantageous to this State.
- (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. (1955, c. 505, s. 3; 1961, c. 1161; 1973, c. 476, s. 84; 1977, c. 645, s. 1; 1981, c. 918, s. 4.)

Effect of Amendments. — The 1981 amendment substituted "State Library Commission"

for "State Library Committee" in the second sentence of subdivision (4).

Chapter 126.

State Personnel System.

Article 8.

Employee Appeals of Grievances and Disciplinary Action.

Sec.

126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision.

Article 11.

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

126-69 to 126-73. [Reserved.]

Article 12.

Work Options Program for State Employees.

Sec.

126-74. Work Options Program established.
126-75. Work options for State employees.
126-76. Promoting Work Options Program.
126-77. Authority of agencies to participate.
126-78. Administration.
126-79. Report required.

ARTICLE 1.

State Personnel System Established.

§ 126-1. Purpose of Chapter; application to local employees.

CASE NOTES

Cited in *Luck v. Employment Security Comm'n*, 50 N.C. App. 192, 272 S.E.2d 607 (1980).

§ 126-4. Powers and duties of State Personnel Commission.

CASE NOTES

Discretion of Personnel Commission to Award Back Pay and Benefits. — Where a permanent State employee is dismissed for performance of duty reasons, without sufficient warnings as required by § 126-35, upon reinstating the employee the decision whether

or not to award back pay and benefits is within the sound discretion of the Personnel Commission. *Jones v. Department of Human Resources*, 300 N.C. 687, 268 S.E.2d 500 (1980).

Stated in *Fracaro v. Priddy*, 514 F. Supp. 191 (M.D.N.C. 1981).

ARTICLE 2.

*Salaries and Leave of State Employees.***§ 126-7. Performance salary increases for State employees.**

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

ARTICLE 8.

*Employee Appeals of Grievances and Disciplinary Action.***§ 126-35. Written statement of reason for disciplinary action.**

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Prior to dismissal for causes relating to performance of duties, a permanent State employee is entitled to three separate warnings that his performance is unsatisfactory, consisting of (1) an oral warning explaining how he is not meeting the job's requirements; (2) a second oral warning outlining his unsatisfactory performance with a follow-up letter reviewing the points covered by the oral warning; (3) a final written warning setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action, and the employee's appeal rights. *Jones v. Department of Human Resources*, 300 N.C. 687, 268 S.E.2d 500 (1980).

Duty of State Agencies to Describe "Specific Acts or Omissions" with Particularity. — This section imposes an affirmative duty on State agencies to inform discharged employees, in writing, of the "specific acts or omissions" that were the reasons for the disciplinary action, and "specific acts or omissions" implies that these incidents should be described with sufficient particularity so that the discharged employee will know precisely what acts or omissions were the basis of his discharge. *Employment Security Comm'n v. Wells*, 50 N.C. App. 389, 274 S.E.2d 256 (1981).

The Employment Security Commission failed to give respondent proper notice of the reasons

for his dismissal as an employee as required by this section where the only information given respondent concerning the reasons for his dismissal was contained in the letter of dismissal, which stated that respondent violated agency procedure in attempting to recruit migrant workers from Florida by phone and personal visit, respondent had forced workers to work for a designated crew leader even though the workers preferred not to work in a crew, and respondent violated agency procedure by not reporting illegal aliens, since the letter did not describe any incidents with sufficient particularity so that respondent could know precisely what acts or omissions were the basis of his discharge. *Employment Security Comm'n v. Wells*, 50 N.C. App. 389, 274 S.E.2d 256 (1981).

Written Statement of Appeal Rights Required. — Due process under the United States and North Carolina Constitutions requires that a permanent State employee who has been dismissed be provided with a statement in writing setting forth his rights of appeal before the 15- and 30-day time limits for notice of appeal provided in this section and § 126-38 commence to run. *Luck v. Employment Security Comm'n*, 50 N.C. App. 192, 272 S.E.2d 607 (1980).

Applied in *North Carolina A & T Univ. v. Kimber*, 49 N.C. App. 46, 270 S.E.2d 492 (1980).

§ 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. An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial de novo. (1975, c. 667, s. 10; 1981, c. 680, s. 1.)

Effect of Amendments. — The 1981 amendment added the last sentence.

Session Laws 1981, c. 680, s. 2, provides: "This act is effective upon ratification and applies to actions commenced on or after that

date [June 25, 1981]."

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

No Restoration without, etc. — In accord with original. See *Brooks v. Best*, 45 N.C. App. 540, 263 S.E.2d 362 (1980).

Pursuant to this section, the State Personnel Commission may reinstate a state employee to the position from which he has been removed. The implication in this section, however, is that the Commission can only act to correct an abuse or where there is a wrongful denial. *North Carolina A & T Univ. v. Kimber*, 49 N.C. App. 46, 270 S.E.2d 492 (1980).

Discretion of Personnel Commission to Award Back Pay and Benefits. — Where a permanent State employee is dismissed for performance of duty reasons, without sufficient warnings as required by § 126-35, upon reinstating the employee the decision whether or not to award back pay and benefits is within the sound discretion of the Personnel Commission. *Jones v. Department of Human Resources*, 300 N.C. 687, 268 S.E.2d 500 (1980).

§ 126-38. Time limit for appeals.**CASE NOTES**

Written Statement of Appeal Rights Required. — Due process under the United States and North Carolina Constitutions requires that a permanent State employee who has been dismissed be provided with a statement in writing setting forth his rights of

appeal before the 15- and 30-day time limits for notice of appeal provided in § 126-35 and this section commence to run. *Luck v. Employment Security Comm'n*, 50 N.C. App. 192, 272 S.E.2d 607 (1980).

ARTICLE 11.***Committee for Review of Applications for Incentive Pay for State Employees.*****§ 126-64. Committee established.**

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 126-65. Application for incentive awards.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 126-66. Qualifications.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 126-67. Awards.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§§ 126-69 to 126-73: Reserved for future codification purposes.

ARTICLE 12.

Work Options Program for State Employees.

§ 126-74. Work Options Program established.

There is established a Work Options Program for State employees in the Division of State Personnel to be administered by the State Personnel Commission. The State Personnel Director shall assign an employee within the Division of State Personnel, to be known as the State Work Options Coordinator, to direct the Work Options Program as established in this Article. (1981, c. 917, s. 1.)

Editor's Note. — Session Laws 1981, c. 917, s. 2, provides: "Nothing herein contained shall be construed to obligate the General Assembly to appropriate any additional funds, nor permit

coverage under the Teachers' and State Employees' Retirement System and health benefits program in Articles 1 and 3 of Chapter 135 except as otherwise provided for therein."

§ 126-75. Work options for State employees.

(a) The following work options allowed State employees are to be included in the program administered under this Article:

- (1) Flexible work hours as established by the State Personnel Commission;
- (2) Job sharing as permitted by the State Personnel Commission;
- (3) Permanent part-time positions as established under the State Personnel Act.

(b) The State Personnel Commission shall examine the present options listed in subsection (a) of this section available to State employees and other options the State Personnel Commission may make available for a comprehensive program of work options for State employees. The State Personnel Commission shall, with the concurrence of the agency, determine the need for additional permanent part-time positions within State Government and how increased use of these positions could benefit employee morale and productivity as well as increase the use of the available labor force. None of the provisions of this Article shall be administered to reduce the total number of hours per day a State office normally is open to serve the public. (1981, c. 917, s. 1.)

§ 126-76. Promoting Work Options Program.

The State Personnel Commission shall develop a program to expand the use of work options. This program shall include training sessions for agency personnel to instruct them in the use of work options available to State employees. The State Personnel Commission shall also provide technical assistance to agency personnel in developing a Work Options Program for each agency or expanding existing programs in each agency. The Work Options Coordinator shall also identify personnel positions within the State Personnel System which can effectively be structured in job sharing or permanent part-time employment positions. (1981, c. 917, s. 1.)

§ 126-77. Authority of agencies to participate.

The State Personnel Commission shall request from each agency assistance in formulating the Work Options Program. Any division, department, agency, instrumentality or authority shall participate in the program of work options as established in this Article. (1981, c. 917, s. 1.)

§ 126-78. Administration.

The State Personnel Commission and any State division, department, agency, instrumentality or authority participating in the State Work Options Program shall promulgate rules necessary for the administration of the program pursuant to Chapter 150A, "The Administrative Procedures Act". (1981, c. 917, s. 1.)

§ 126-79. Report required.

The State Personnel Commission shall require a biennial report of each State division, department, agency, instrumentality or authority on the status of the Work Options Program. The State Personnel Commission shall in turn make a biennial report to the General Assembly on the status of the Work Options Program, including any increase in the use of job sharing, flexible work hours and any other approved work option for State employees. (1981, c. 917, s. 1.)

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

Sec.

128-8. [Repealed.]

Article 3.

Retirement System for Counties, Cities and Towns.

128-21. Definitions.

Sec.

128-24. Membership.

128-26. Allowance for service.

128-27. (Effective until July 1, 1982) Benefits.

128-27. (Effective July 1, 1982) Benefits.

128-30. Method of financing.

ARTICLE 1.

General Provisions.

§ 128-8: Repealed by Session Laws 1981, c. 884, s. 13, effective July 8, 1981.

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:

- (1) "Accumulated contribution" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest thereon, as provided in G.S. 128-30, subsection (b).
- (2) "Actuarial equivalent" shall mean a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (3) "Annuity" shall mean payments for life derived from the accumulated contribution of a member. All annuities shall be payable in equal monthly installments.
- (4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (5) "Average final compensation" shall mean the average annual compensation, not including any terminal payments for unused sick leave, of a member during the four consecutive calendar years of creditable service producing the highest such average.
- (6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Article.
- (7) "Board of Trustees" shall mean the Board provided for in G.S. 128-28 to administer the Retirement System.
- (7a) "Compensation" shall mean all salaries and wages, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee in the unit of the Retirement System for which he is performing full-time work.

- (8) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in G.S. 128-26.
- (9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to an employee if he worked the full normal working time, including any allowance of maintenance or in lieu thereof received by the member.
- (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.
- (11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.
- (12) "Medical board" shall mean the board of physicians provided for in G.S. 128-28, subsection (1).
- (13) "Member" shall mean any person included in the membership of the Retirement System as provided in G.S. 128-24.
- (14) "Membership service" shall mean service as an employee rendered while a member of the Retirement System.
- (15) "Pension" shall mean payments for life derived from money provided by the employer. All pensions shall be payable in equal monthly installments.
- (16) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (17) "Prior service" shall mean the service of a member rendered before the date he becomes a member of the System, certified on his prior service certificate and allowable as provided by G.S. 128-26.
- (18) "Regular interest" shall mean interest compounded annually at such rate as shall be determined by the Board of Trustees in accordance with G.S. 128-29, subsection (b).

- (19) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this Article. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.
- (20) "Retirement allowance" shall mean the sum of the annuity and the pension, or any optional benefit payable in lieu thereof.
- (21) "Retirement System" shall mean the North Carolina Local Governmental Employees' Retirement System as defined in this Article.
- (22) "Service" shall mean service as an employee as described in subdivision (10) of this section and paid for by the employer as described in subdivision (11) of this section.
- (23) "Year" shall mean the regular fiscal year beginning July 1, and ending June 30; in the following calendar year unless otherwise defined by regulation of the Board of Trustees. (1939, c. 390, s. 1; 1941, c. 357, s. 1; 1943, c. 535; 1945, c. 526, s. 1; 1947, c. 833, ss. 1, 2; 1949, c. 231, ss. 1, 2; 1949, c. 1015; 1959, c. 491, ss. 1, 2; 1961, c. 515, s. 5; 1965, c. 781; 1971, c. 325, ss. 1-4; 1975, 2nd Sess., c. 983, s. 125; 1977, c. 316, ss. 1, 2; 1981, c. 557, ss. 1, 2.)

Local Modification. — City of Asheville: 1981, c. 737.

Effect of Amendments. — The 1981 amend-

ment, effective September 1, 1981, inserted
", not including any terminal payments for
unused sick leave," in subdivisions (5) and (7a).

§ 128-24. Membership.

The membership of this Retirement System shall be composed as follows:

- (1) All employees entering or reentering the service of a participating county, city, or town after the date of participation in the Retirement System of such county, city, or town, except that law-enforcement officers, as defined in subsection (m) of G.S. 143-166, may elect to become members of the Law-Enforcement Officers' Benefit and Retirement Fund or the North Carolina Local Governmental Employees' Retirement System. 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.
- (1a) Should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions or should he become a beneficiary or die, he shall thereupon cease to be a member; provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.
- (2) All persons who are employees of a participating county, city, or town except those who shall notify the Board of Trustees in writing, on or before 90 days following the date of participation in the Retirement System by such county, city or town: Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing laws providing for retirement allowances for employees wholly or partly at

the expense of funds drawn from the treasury of the State of North Carolina or of any political subdivision thereof, shall not be members: Provided, further, that employees of county social services and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation. Any member on or after July 1, 1969, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.

- (3) Effective January 1, 1955, there shall be three classes of members, to be designated Class A, Class B and Class C respectively. Each member who is an employee of a Class A employer shall be a Class A member; each member who is an employee of a Class B employer shall be a Class B member; and each member who is an employee of a Class C employer shall be a Class C member.
- (3a) No person who becomes an employee as the term is defined in this Chapter, shall thereby become a member of the Retirement System who is elected, appointed, employed or reemployed after he has attained the age of 62 years: Provided, however, that this will not apply to any member whose account is active upon his return to service.
- (4) The provisions of this subdivision (4) shall apply to any member whose retirement became effective prior to July 1, 1965, and became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 128-27(b1) as in effect at the date of such separation from service.
 - a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of 60 years, or if a uniformed policeman or fireman upon the date he shall have attained the age of 55 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 next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b), paragraphs (1), (2) and (3).
 - b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon written application to the Board of

Trustees setting forth at what time, not less than 30 days nor more than 90 days next following the date of filing such application, 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 age 60 years, or if a uniformed policeman or fireman at the attainment of age 55 years, upon proper application therefor.

- c. Should an employee who retired on an early or service retirement allowance be restored to service prior to the time he shall have attained the age of 62 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon his subsequent retirement, he shall be entitled to an allowance not less than 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.
 - d. Should an 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 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 compensation received for the 12 months of service prior to retirement. 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. 128-21(3).
- (5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, 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. 128-27(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, 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 aforesaid 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. 128-27(b1), provided that such benefits will be computed in accordance with subsection (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 subsection (b3) on or after July 1, 1969.

- b. In lieu of the benefits provided in paragraph a of this subdivision, 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. 128-27(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 paragraph c and d of the preceding subdivision (4) shall apply equally to this subdivision (5).
- (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; 1981, c. 979, s. 2.)

Effect of Amendments. — The 1981 amendment, in paragraph d of subdivision (4), inserted "at the time of retirement" following "sum of the retirement allowance" near the

middle of the first sentence and substituted "compensation received for the 12 months of service prior to retirement" for "average final compensation" at the end of the first sentence.

§ 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.

(b) The Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year.

(c) Subject to the above restrictions and to such other rules and regulations as the Board of Trustees may adopt, the Board of Trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service, the Board of Trustees may use for the purpose of this Article the compensation rates which if they had progressed with the rates of salary increase shown in the tables as prescribed in subsection (o) of G.S. 128-28 would have resulted in the same average salary of the member for the five years immediately preceding the date of participation of his employer, as the records show the member actually received.

(d) Any member may, up to his date of retirement and within one year thereafter, request the Board of Trustees to modify or correct his prior service credit.

(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 the 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 not to exceed one month of credit for each two years of membership service or fraction 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. 128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay 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 this account was closed.

On and after July 1, 1973, a member whose account in the Teachers' and State Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 135-3(3) 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 Teachers' and State 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.

(f) Effective January 1, 1955, there shall be three classes of prior service certificates, to be designated as Class A, Class B and Class C respectively. Each such certificate issued on account of service rendered to a Class A employer shall be a Class A prior service certificate; each such certificate issued on account of service rendered to a Class B employer shall be a Class B prior service certificate; and each such certificate issued on account of service rendered to a Class C employer shall be a Class C prior service certificate. Each Class C prior service certificate shall specify a prior service benefit percentage rate which shall be three per centum (3%) in the case of any member entitled to such certificate who is, at the date of participation of his employer, in a position covered by the Social Security Act under a federal-State agreement and which shall be five per centum (5%) in the case of a member entitled to such certificate but who at the date of participation of his employer is in a position not so covered.

(g) During periods when a member is on leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 128-30(b)(4). If he is so contributing, the annual rate of compensation paid to such employee immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence.

(h) Creditable service at retirement shall include any service rendered by a member while on leave of absence to serve as a member or officer of the General Assembly which is not creditable toward retirement under the Legislative Retirement Fund provided the allowance of such credit shall be contingent upon the cancellation of service credit in the fund and the transfer of the member's contributions plus accumulated interest from the fund to this 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; 1981, c. 557, s. 3.)

Effect of Amendments. — The 1981 amendment, effective September 1, 1981, inserted "not to exceed one month of credit for each two

years of membership service or fraction thereof" in the first paragraph of subsection (e).

§ 128-27. (Effective until July 1, 1982) Benefits.

(a) Service Retirement Benefits. —

- (1) Any member 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 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 and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a uniformed policeman or fireman, he shall have attained the age of 55 years and have at least five years of creditable 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 seventieth 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.

(b) Service Retirement Allowance of Persons Retiring on or after July 1, 1959, but prior to July 1, 1965. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1965, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier, on the basis of contributions made prior to such earlier age; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of 65 years, or at the earlier age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the System been in operation and he contributed thereunder at the rate of
 - a. Six and twenty-five hundredths percent (6.25%) of his compensation if such certificate is a Class A certificate, or
 - b. Five percent (5%) of his compensation if such certificate is a Class B certificate, or
 - c. Four percent (4%) of his compensation if such certificate is a Class C certificate.

(b1) Service Retirement Allowances of Persons Retiring on or after July 1, 1965, but prior to July 1, 1967. — Upon retirement from service on or after July 1, 1965, but prior to July 1, 1967, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars (\$4,800) multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.
- (2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above but shall be reduced by five twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday, 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 benefit provided by G.S. 128-27(b).

(b2) Service Retirement Allowances of Persons Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, 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 five thousand six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) 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.
 - (2a) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent ($\frac{1}{3}$ 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, 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 provision, any member whose creditable service commenced prior to July 1, 1965, and 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).
- (b3) Service Retirement Allowances of Persons Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance which shall consist of:
- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and 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 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.
 - (3a) If the member's service retirement date occurs before his sixty-second birthday but on or after his sixtieth birthday and on or after 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-second birthday.
 - (3b) If the member's service retirement date occurs before his sixtieth birthday but on or after 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 (3a) above.

- (4) 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).

(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 sixty-fifth birthday 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 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).

(c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than 30 and not more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

(d) Allowance on Disability Retirement of Persons Retiring prior to July 1, 1965. — Upon retirement for disability, in accordance with subsection (c) above, prior to July 1, 1965, a member shall receive a service retirement

allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;
- (2) A pension equal to seventy-five percent (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1965, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1965, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(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.

(e) Reexamination of Beneficiaries Retired on Account of Disability. — Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.
- (2) Should a disability beneficiary under the age of 62 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute

thereafter at the contribution rate which is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance prescribed in a below reduced by the amount in b below.
 - a. 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.
 - b. The actuarial equivalent of the retirement benefits he previously received.
- (4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 128-27(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement Systems shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

- (f) Return of Accumulated Contributions. — Should a member cease to be an employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from receipt in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System, his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 128-26; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. Notwithstanding any other provision of Chapter 128, there shall be deducted

from any amount otherwise payable hereunder any amount due any participating employer by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any participating employer; provided that, notwithstanding any other provisions of this Chapter, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be an employee, any amount due such participating employer by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such participating employer upon demand; provided, further, that such participating employer shall have notified the executive secretary of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such participating employer nor for any failure by the Retirement System for any reason to make such deductions.

(g) 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. Provided, however, any member having elected Options two, three, five, or six and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

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 $\frac{1}{120}$ th 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.

(h) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of Chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the Board of Trustees may adopt, the provisions of Chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments.

(i) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(j) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits, to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
Year 1962	9%
Year 1961	10%
Year 1960	11%

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
Year 1959	12%
Year 1958	13%
Year 1957	14%
Year 1956	15%
Year 1955	16%
Year 1954	17%
Year 1953	18%
Year 1952	19%
Year 1951	20%
Year 1950	21%
Year 1949	22%
Year 1948	23%
Year 1947	24%
Year 1946	25%

The minimum increase pursuant to this subsection (j) shall be five dollars (\$5.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to a retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(k) Post-Retirement Increases in Allowances. — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971, as follows:

<i>Increase in Index</i>	<i>Increase in Allowance</i>
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum ($\frac{1}{10}$ of 1%), but not more than four per centum (4%); provided that any such increase in allowances shall be contingent upon the total fund providing sufficient investment gains to cover the additional actuarial liabilities on account of such increase.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

(1) Death Benefit Plan. — 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. 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.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) The member had attained age 50 with at least 20 years of creditable service, or had attained age 55 regardless of length of service, or had credit for at least 30 years of service regardless of age.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

(n) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1965, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1965 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971 have been increased to the extent provided for in subsection (k) above.

(o) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1969. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1969, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Years in Which Benefits Commenced</i>	<i>Percentage</i>
1959 through 1968	10
1946 through 1958	25

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (k).

(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.

(x) Increases in Benefits to Those Persons Who Were Retired prior to July 1, 1978. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1978, shall be increased by a percentage in accordance with the following schedule:

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
On or before June 30, 1959	10%
July 1, 1959, to June 30, 1968	7%
July 1, 1968, to June 30, 1978	2%

This increase shall be calculated independent of any other post-retirement increase, without compounding, otherwise payable from and after July 1, 1980.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1980, which shall become payable on January 1, 1982, as otherwise provided in G.S. 128-27(h), shall be the percentage available therefrom plus an additional six and six-tenths percent (6.6%); provided that in no case shall the increase exceed a total of seven percent (7%). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of the 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; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; 1981, c. 975, s. 1; c. 978, ss. 3, 4; c. 981, s. 2.)

Cross References. — For this section as amended effective July 1, 1982, see the following section, also numbered 128-27.

Effect of Amendments. —

Session Laws 1981, c. 672, in the first sentence of subsection (f), substituted "his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon" for "the sum of his contributions and the accumulated regular interest thereon." Session Laws 1981, c. 672, s. 5, makes the 1981 amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

Session Laws 1981, c. 689, effective July 1, 1981, added the second proviso in the first paragraph of subsection (c).

Session Laws 1981, c. 940 added the third proviso, including subdivisions (1) and (2), in the first paragraph of subsection (c) and added the second paragraph of subsection (c).

Session Laws 1981, c. 975 rewrote subdivision (1) of subsection (e).

Session Laws 1981, c. 978 deleted "in service" following "Any member", substituted "what time" for "which time", and inserted "as of the first day of a calendar month", all near the beginning of subdivision (1) of subsection (a), and rewrote the proviso at the end of subdivision (1) of subsection (a). The amendment also deleted "regardless of his years of creditable service" following "sixty-fifth birthday" near the beginning of subdivision (1) of subsection (b6).

Session Laws 1981, c. 981 added the first sentence of subsection (l), and added subsection (y).

§ 128-27. (Effective July 1, 1982) Benefits.

(a) Service Retirement Benefits. —

- (1) Any member 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 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 and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a uniformed policeman or fireman, he shall have attained the age of 55 years and have at least five years of creditable 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 seventieth 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.

(b) Service Retirement Allowance of Persons Retiring on or after July 1, 1959, but prior to July 1, 1965. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1965, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier, on the basis of contributions made prior to such earlier age; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of 65 years, or at the earlier age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the System been in operation and he contributed thereunder at the rate of
 - a. Six and twenty-five hundredths percent (6.25%) of his compensation if such certificate is a Class A certificate, or

- b. Five percent (5%) of his compensation if such certificate is a Class B certificate, or
- c. Four percent (4%) of his compensation if such certificate is a Class C certificate.

(b1) Service Retirement Allowances of Persons Retiring on or after July 1, 1965, but prior to July 1, 1967. — Upon retirement from service on or after July 1, 1965, but prior to July 1, 1967, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800), plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of forty-eight hundred dollars (\$4,800) multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800), 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 rendered after January 1, 1966.
- (2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above but shall be reduced by five twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday, 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 benefit provided by G.S. 128-27(b).

(b2) Service Retirement Allowances of Persons Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, 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 five thousand six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) 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.
- (2a) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent ($\frac{1}{3}$ 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, 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 provision, any member whose creditable service commenced prior to July 1, 1965, and 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).

(b3) Service Retirement Allowances of Persons Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and 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 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.
 - (3a) If the member's service retirement date occurs before his sixty-second birthday but on or after his sixtieth birthday and on or after 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-second birthday.
 - (3b) If the member's service retirement date occurs before his sixtieth birthday but on or after 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 (3a) above.
 - (4) 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).
- (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 sixty-fifth birthday 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 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).

(c) **Disability Retirement Benefits.** — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than 30 and not more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

(d) **Allowance on Disability Retirement of Persons Retiring prior to July 1, 1965.** — Upon retirement for disability, in accordance with subsection (c) above, prior to July 1, 1965, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;
- (2) A pension equal to seventy-five percent (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

(d1) **Allowance on Disability Retirement of Persons Retiring on or after July 1, 1965, but prior to July 1, 1969.** — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1965, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
 - (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).
- (d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:
- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
 - (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).
- (d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, 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.
- (d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of

this section on or after July 1, 1982, a member shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired on Account of Disability. — Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent ($\frac{1}{10}$ of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.
- (2) Should a disability beneficiary under the age of 62 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute thereafter at the contribution rate which is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving

immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance prescribed in a below reduced by the amount in b below.

a. 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.

b. The actuarial equivalent of the retirement benefits he previously received.

- (4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 128-27(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement Systems shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(f) Return of Accumulated Contributions. — Should a member cease to be an employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from receipt in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System, his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 128-26; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. Notwithstanding any other provision of Chapter 128, there shall be deducted from any amount otherwise payable hereunder any amount due any participating employer by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any participating employer; provided that, notwithstanding any other provisions of this Chapter, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be an employee, any amount due such participating employer by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to

such participating employer upon demand; provided, further, that such participating employer shall have notified the executive secretary of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such participating employer nor for any failure by the Retirement System for any reason to make such deductions.

(g) 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. Provided, however, any member having elected Options two, three, five, or six and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

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 one one-hundred-twentieth 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.

(h) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of Chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the Board of Trustees may adopt, the provisions of Chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments.

(i) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(j) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits, to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
Year 1962	9%
Year 1961	10%
Year 1960	11%
Year 1959	12%
Year 1958	13%
Year 1957	14%
Year 1956	15%
Year 1955	16%
Year 1954	17%
Year 1953	18%

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
Year 1952	19%
Year 1951	20%
Year 1950	21%
Year 1949	22%
Year 1948	23%
Year 1947	24%
Year 1946	25%

The minimum increase pursuant to this subsection (j) shall be five dollars (\$5.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to a retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(k) Post-Retirement Increases in Allowances. — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%) each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971, as follows:

<i>Increase in Index</i>	<i>Increase in Allowance</i>
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum ($\frac{1}{10}$ of 1%), but not more than four per centum (4%); provided that any such increase in allowances shall be contingent upon the total fund providing sufficient investment gains to cover the additional actuarial liabilities on account of such increase.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

(l) Death Benefit Plan. — 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. 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 busi-

ness 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.

(m) **Survivor's Alternate Benefit.** — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) The member had attained age 50 with at least 20 years of creditable service, or had attained age 55 regardless of length of service, or had credit for at least 30 years of service regardless of age.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

(n) **Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967.** — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1965, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1965 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971 have been increased to the extent provided for in subsection (k) above.

(o) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1969. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1969, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Years in Which Benefits Commenced</i>	<i>Percentage</i>
1959 through 1968	10
1946 through 1958	25

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (k).

(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.

(x) Increases in Benefits to Those Persons Who Were Retired prior to July 1, 1978. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1978, shall be increased by a percentage in accordance with the following schedule:

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
On or before June 30, 1959	10%
July 1, 1959, to June 30, 1968	7%
July 1, 1968, to June 30, 1978	2%

This increase shall be calculated independent of any other post-retirement increase, without compounding, otherwise payable from and after July 1, 1980.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1980, which shall become payable on January 1, 1982, as otherwise provided in G.S. 128-27(h), shall be the percentage available therefrom plus an additional six and six-tenths percent (6.6%); provided that in no case shall the increase exceed a total of seven percent (7%). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of the 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; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; 1981, c. 975, s. 1; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, s. 2.)

Cross References. — For this section as in effect until July 1, 1982, see the preceding section, also numbered 128-27.

Effect of Amendments.

Session Laws 1981, c. 672, in the first sentence of subsection (f), substituted "his

contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon" for "the sum of his contributions and the accumulated regular

interest thereon." Session Laws 1981, c. 672, s. 5, makes the 1981 amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

Session Laws 1981, c. 689, effective July 1, 1981, added the second proviso in the first paragraph of subsection (c).

Session Laws 1981, c. 940 added the third proviso, including subdivisions (1) and (2), in the first paragraph of subsection (c) and also added the second paragraph of subsection (c).

Session Laws 1981, c. 975 rewrote subdivision (1) of subsection (e).

Session Laws 1981, c. 978 deleted "in service" following "Any member", substituted "what

time" for "which time", and inserted "as of the first day of a calendar month", all near the beginning of subdivision (1) of subsection (a), and rewrote the proviso at the end of subdivision (1) of subsection (a). The amendment also deleted "regardless of his years of creditable service" following "sixty-fifth birthday" near the beginning of subdivision (1) of subsection (b6).

Session Laws 1981, c. 980, effective July 1, 1982, inserted "but prior to July 1, 1982" in the catchline and the text of subsection (d3) and added subsection (d4). The amendment also substituted "of this section" for "above" following "subsection (c)" in subsection (d3).

Session Laws 1981, c. 981 added the first sentence of subsection (1), and added subsection (y).

§ 128-30. Method of financing.

(a) Funds to Which Assets of Retirement System Credited. — All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund and the expense fund.

(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) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer for the sole purpose of acquiring knowledge, talents, or

abilities and to increase the efficiency of service to the employer. This creditable service shall be limited to a career total of four years for each member and may be obtained in the following manner:

- a. Approved leave of absence. — Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.
- b. No educational leave policy. — Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.
- c. Educational program prior to July 1, 1981. — Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to 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 retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unredacted retirement allowance as determined by the board of trustees upon the advice of the consulting actuary, plus a fee to be determined by the board of trustees.

Payments required to be made by the member under subparagraphs a or b above shall be due by the 15th of the month following the month for which service credit is allowed and payments made after the due date shall be assessed a one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the due date; provided, however, the member shall forfeit the right to continue contributions if any payment is not made within 90 days of the due date and payments made shall be refunded and service credits cancelled if the member does not become a contributing employee within 12 months after completing the educational program and fails to complete three years of subsequent consecutive membership service except in the event of death or disability.

(c) Annuity Reserve Fund. — The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this Article. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(d) Pension Accumulation Fund. — The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the Board of Trustees, an amount equal to a certain percentage of the actual compensation of each member, to be known as the "normal contribution" and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation for any employer whose participation commenced prior to July 1, 1951, the normal contribution shall be three percent (3%) for general employees and five percent (5%) for firemen and policemen, and the accrued liability contribution shall be three percent (3%) for general employees and six percent (6%) for firemen and policemen. Until the first valuation for any employer whose participation commenced on or after July 1, 1951, the normal contribution shall be four percent (4%) for general employees and six and two-thirds percent ($6\frac{2}{3}\%$) for firemen and policemen, and the accrued liability contribution shall be four percent (4%) for general employees and eight percent (8%) for firemen and policemen.
- (2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the Board of Trustees, the actuary engaged by the Board to make each valuation required by this Article during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the actual compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account and for the pro rata share of the cost of administration of the Retirement System. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum (1%) of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the Board of Trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.
- (3) The "accrued liability contribution" shall be set for each employer on the basis of the prior service credits allowable to the employees thereof, who are entitled to prior service certificates, and shall be paid for a period of approximately 30 years, provided that the length of the period of payment for each employer after contributions begin shall be the same for all employers and shall be determined by the Board of Trustees as the result of actuarial valuations.
- (4) At the end of the first year following the date of participation for each employer, the accrued liability payable by such employer shall be set, by deducting from the present value of the total liability for all pensions payable on account of all members and pensioners of the System

who became participants through service for such employer, the present value of the future normal contributions payable, and the amount of any assets resulting from any contributions previously made by such employer. Then the "accrued liability contribution" rate for such employer shall be the per centum of the total annual compensation of all members employed by such employer which is equivalent to four per centum (4%) of the amount of such accrued liability. The expense of making such actuarial valuation to determine the accrued liability contribution for each employer shall be paid by such employer. The accrued liability contribution rate shall be increased on the basis of subsequent valuation if benefits are increased over those included in the valuations on the basis of which the original accrued liability contribution rate was determined.

- (5) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total earned compensation of all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum (3%) greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.
- (6) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the Board of Trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at that time members.
- (7) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.
- (8) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(e) Pension Reserve Fund. — The pension reserve fund shall be the fund in which shall be held the reserves of all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(f) Expense Fund. — The expense fund shall be the fund from which the expenses of the administration of the Retirement System shall be paid, exclusive of amounts payable as retirement allowances and as other benefits provided herein. Contribution shall be made to the expense fund as follows:

- (1) The Board of Trustees shall determine annually the amount required to defray such administrative expenses for the ensuing fiscal year and shall adopt a budget in accordance therewith. The budget estimate of such expenses shall be paid to the expense fund from the pension accumulation fund.

- (2) For the purpose of organizing the Retirement System and establishing an office, the Board of Trustees may provide as a prerequisite to participation in the Retirement System that each participating employer or employee or both shall pay an additional contribution to the Retirement System for the expense fund not to exceed two dollars (\$2.00) for each employee, such contribution of the employee to be credited to his individual account in the annuity savings fund at such later time as the Board of Trustees shall determine, and/or the Board of Trustees may borrow such amounts as may be necessary to organize and establish the Retirement System.

(g) 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 participation in the Retirement System the contributions payable by such member as provided in this Article. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as vouchers for the amount so deducted.
 - b. The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this Article and shall transmit monthly, or at such time as the Board of Trustees shall designate, the amount specified to be deducted, to the secretary-treasurer of the Board of Trustees. The secretary-treasurer of the Board of Trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said Board of Trustees for use according to the provisions of this Article.
- (2) The collections of employers' contributions shall be made as follows: Upon the basis of each actuarial valuation provided herein the Board of Trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection (d) of this section.
- (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 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.
- (h) Merger of Annuity Reserve Fund, and Pension Reserve Fund into Pension Accumulation Fund. — Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the Board of Trustees shall determine, the annuity reserve fund and the pension reserve fund shall be merged into and become a part of the pension accumulation fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the Board of Trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System. (1939, c. 390, s. 10; 1941, c.

357, s. 8; 1943, c. 535; 1945, c. 526, s. 6; 1951, c. 274, ss. 7-9; 1955, c. 1153, s. 7; 1959, c. 491, s. 9; 1965, c. 781; 1967, c. 978, ss. 9, 10; 1971, c. 325, ss. 17-19; 1975, 2nd Sess., c. 983, ss. 129, 130; 1981, c. 1000, ss. 1, 3.)

Effect of Amendments. — The 1981 amendment rewrote subdivision (4) of subsection (b), and deleted the former second sentence of subdivision (1) of subsection (d), which read: "In addition, such contributions by participating employers will be required for each member on

leave of absence who makes monthly contributions in accordance with (b)(4) above, and will be based on the salary or wage the member was receiving at the time the leave of absence was granted."

Chapter 129.**Public Buildings and Grounds.****Article 7.****North Carolina Capital Building
Authority.**

Sec.

129-42. General powers and duties of Authority.

ARTICLE 7.*North Carolina Capital Building Authority.***§ 129-42. General powers and duties of Authority.**

The North Carolina Capital Building Authority shall have the following powers and duties:

- (1) To select and employ architects, engineers, and other consultants in accordance with established State policy to plan and supervise the construction of buildings and other capital improvement projects for those projects for which the North Carolina General Assembly may make appropriations, and all other agencies which may be brought under this Article or which may come under this Article by choice;
- (2) The Department of Administration shall receive bids and with the approval of the North Carolina Capital Building Authority award the contracts for the construction of all such buildings and projects. The Authority may delegate to the Department of Administration authority to award contracts for construction of buildings and other projects which are not required by G.S. 143-129 to be publicly advertised for proposals;
- (3) To submit an annual report of its activities to the North Carolina Capital Planning Commission;
- (4) To submit a report to the North Carolina Capital Planning Commission on completion of all major projects. (1967, c. 994, s. 3; 1969, c. 112; 1981, c. 502, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted "in accordance with plans developed by the North Carolina Capital Planning Commission"

preceding "for those projects for which the North Carolina General Assembly" in subdivision (1), and added the second sentence of subdivision (2).

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.

130-9.7. Suspension of admissions to nursing home or domiciliary home.

130-11. Duties of the administrative staff of the Department of Human Resources.

Article 3.

Local Health Departments.

130-14. District health departments.

130-16. Compensation of board members.

130-17. Powers and duties of local boards; expenditures.

Article 3A.

Board of Health in a Consolidated City-County.

130-23.1 to 130-23.4. [Repealed.]

Article 4.

Incorporation of Health Codes by Reference.

130-24. [Repealed.]

130-24.1. Adoption by reference.

130-25, 130-26. [Repealed.]

Article 7.

Vital Statistics.

130-46. Death registration.

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

Article 8.

Infectious Diseases Generally.

130-82.2. Persons in charge of laboratories shall report positive tuberculosis tests.

Article 9.

North Carolina Immunization Law.

130-90. Submission of certificate to day-care facility and school authorities; record maintenance; reporting.

Article 10.

Venereal Disease.

Part 2. Inflammation of the Eyes of the Newborn.

Sec.

130-108. Eyes of newborn to be treated; records.

130-110. Duties of Commission for Health Services.

130-112. Registration of midwives.

Article 12.

Sanitary Districts.

130-126. Election and terms of office of sanitary districts.

130-126.1. City governing body acting as sanitary district board.

130-127. Vacancy appointments to district boards.

130-128. Corporate powers.

130-130. Power to condemn property.

130-145. Removal of member of board.

130-147. Returns of elections.

130-148. Procedure for extension of district.

130-149. District and municipality extending boundaries and corporate limits simultaneously.

130-153. Further validation of dissolution of districts.

130-156.2. Merger of district with contiguous city or town; election.

130-156.5. Merger of two contiguous sanitary districts.

Article 13.

Sanitary Sewage Disposal.

130-160. [Repealed.]

Article 13B.

Solid Waste Management.

130-166.16. Definitions.

130-166.17A. Conveyance of land used for hazardous waste landfill facility to the State.

130-166.17B. Local ordinances prohibiting hazardous waste facilities invalid; petition to establish facility.

130-166.18. Solid waste management program.

130-166.18A. Additional requirements for hazardous waste facilities.

130-166.18B. Limitations on powers of local governments.

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Sec.

- 130-166.19A. Hazardous waste fund.
- 130-166.21. Recordation of permits for disposal of waste on land.
- 130-166.21B. Imminent hazard.
- 130-166.21D. Construction.
- 130-166.21E. Penalties; remedies.

Article 13C.

Ground Absorption Sewage Disposal System Act of 1973.

130-166.22 to 130-166.33. [Repealed.]

Article 13D.

North Carolina Drinking Water Act.

- 130-166.47. Condemnation of lands for public water systems.
- 130-166.49. Variances and exemptions; considerations; duration; condition; notice and hearing.
- 130-166.54. Penalties; remedies; contested cases.
- 130-166.55. Powers of the Secretary.
- 130-166.57 to 130-166.61. [Reserved.]

Article 13E.

Ground Absorption Sewage Treatment and Disposal Act of 1981.

- 130-166.62. Short title.
- 130-166.63. Preamble.
- 130-166.64. Definitions.
- 130-166.65. Sanitary sewage treatment and disposal; rules.
- 130-166.66. Improvements permit required.
- 130-166.67. Certificate of completion.
- 130-166.68. Improvements permit or certificate of completion required before other permits to be issued.
- 130-166.69. Limitation on electrical service.
- 130-166.70. Appeals procedure.
- 130-166.71. Duties of land sales businesses and mobile home dealers.
- 130-166.72. Penalties.

Article 14.

Meat Markets.

- 130-167. Regulation of places selling meat.
- 130-168. [Repealed.]
- 130-169. Application of Article.

Article 15A.

Home Health Agencies.

- 130-170.1. Definitions; licensing; regulations of Commission; appeals.

Article 17. Cancer Control Program.

Sec.

130-180 to 130-186. [Repealed.]

Article 17A.

Cancer Studies.

130-186.2. [Repealed.]

Article 17C.

Cancer Control Program.

- 130-186.15. Administration of program; rules.
- 130-186.16. Financial aid for diagnosis and treatment.
- 130-186.17. Cancer clinics.
- 130-186.18. Incidence reporting of cancer.
- 130-186.19. Central Cancer Registry.
- 130-186.20. Immunity of persons who report cancer.
- 130-186.21. Confidentiality of records.
- 130-186.22. Cancer Committee of the North Carolina Medical Society.
- 130-186.23. Duties of Department of Human Resources.
- 130-186.24. Reports by Secretary.

Article 18.

Midwives.

- 130-187. Regulation of midwives.

Article 20.

Surgical Operations on Inmates.

130-191. [Transferred.]

Article 20A.

Treatment of Self-Inflicted Injuries upon Prisoners.

130-191.1. [Transferred.]

Article 21.

Postmortem Medicolegal Examinations.

- 130-197. County medical examiners; appointment; term of office and vacancies.
- 130-199. Duties of medical examiners upon receipt of notice; reports; fees.
- 130-200. When autopsies and other pathological examinations to be performed.
- 130-201. Rules and regulations.
- 130-202. Reports and records received as evidence.
- 130-202.3 to 130-202.7. [Reserved.]

Article 21A.

Corneal Tissue Removal.

- 130-202.8. Authorization of medical examiner; conditions.
- 130-202.9. Immunity from liability.

Article 24.**Mosquito Control Districts.**

Sec.

130-211. Nature of district; procedure for forming districts.

130-213. Corporate powers.

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

Sec.

130-275. Penalties; remedies.

ARTICLE 1.***General Provisions.*****§ 130-3. Definitions, as used in this Chapter.**

(a) "Ambulance" includes any privately or publicly owned vehicle that is specially designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated for the transportation upon the streets or highways in this State of persons who are sick, injured, wounded or otherwise incapacitated or helpless.

(b) "Commission" means "Commission for Health Services."

(b1) "Department" means "Department of Human Resources."

(c) "Funeral director" means a person licensed in accordance with the provisions of Article 13 of Chapter 90 of the General Statutes of North Carolina.

(d) "Licensed physician" means a physician licensed to practice medicine in North Carolina.

(e) "Local board of health" includes district board of health and county board of health.

(f) "Local health department" includes district health department and county health department.

(g) "Local health director" includes local health officer, county health officer, district health officer, county superintendent of health, county health director, or any other title by which the administrative head of a local health department is designated.

(h) "Person" means any individual, firm, association, organization, unit of local government, partnership, business trust, corporation, or company.

(i) "Secretary" means the "Secretary of Human Resources."

(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; 1981, c. 130, s. 1; c. 340, ss. 1-4.)

Editor's Note. — Article 13 of Chapter 90, referred to in this section, has been recodified as Article 13A of Chapter 90.

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, deleted "city board of health, and city-county board of health" from the end of subsection (e) and substituted "and" for a comma between the remaining boards, deleted "city health department, and city-county health department" from

the end of subsection (f) and substituted "and" for a comma between the remaining departments, and deleted "city health officer, city-county health officer" from the list in subsection (g).

The second 1981 amendment made the same changes as the first amendment in subsections (e), (f) and (g), and inserted "unit of local government," in subsection (h).

ARTICLE 2.

*Administration of Public Health Law.***§ 130-9. Powers and duties of the Department of Human Resources and Commission for Health Services.**

(a) Repealed by Session Laws 1973, c. 476, s. 128.

(b) The Department of Human Resources is authorized to accept and allocate or expend any grants-in-aid for public health purposes which may be made available to the State by the federal government. This Chapter is to be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. The Commission for Health Services is further authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for receiving such federal funds. Any moneys so received are to be deposited with the State Treasurer and are to be expended by the Department of Human Resources for the public health purposes specified.

(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.

(d) The Commission for Health Services shall not have any power or authority to regulate or restrict the license to practice of any person licensed to practice under Chapter 90.

(e) Nursing Homes. —

(1) The North Carolina Medical Care Commission shall establish standards, adopt rules and regulations for the operation, inspection, and licensing of nursing homes as the same are hereinafter defined. Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality or communications between physician and patient, the representatives of the Department of Human Resources who make these licensure inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients, residents, or clients of the facility being inspected unless that patient, resident or client objects in writing to such review of his records. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the patient, resident or client has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient, resident, client or legal representative or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The

Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section the patient, resident or client must be advised in writing that he has the right to object in writing to such release of information or review of his records and that by an objection in writing he may prohibit the inspection or release of his records.

- (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) **Domiciliary Home Distinguished.** — A domiciliary home, as distinguished from a nursing home, is a place for the care of aged or disabled persons whose principal need is a home with the sheltered and custodial care their age or disabilities require. Domiciliary homes exist to provide this care in a residential setting and on a long-term basis. In these 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 or disabled, but the administration of medication is supervised. The residents of these homes will not, as a rule, have remedial ailments or other ailments for which continuing, skilled, planned medical and nursing care is indicated. The resident, however, may receive continuing, planned medical and nursing care if it is provided under the direct supervision of a physician, nurse, or home health agency and meets the resident's medical needs. A major factor which distinguishes these homes is that residents may be given congregate services as distinguished from the individual medical care required for patients in nursing homes.

(5) Operation of Nursing Home and Domiciliary Homes. — Any person may operate a nursing home, as defined in subdivision (2) of this subsection, and a domiciliary home, 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. A facility containing both a nursing home and a domiciliary portion must be licensed by the Department of Human Resources. The Medical Care Commission, upon consultation with the Social Services Commission, shall adopt standards, rules and regulations for the operation of these domiciliary homes that are equal to the standards, rules and regulations adopted by the Social Services Commission for the operation of freestanding domiciliary homes. The domiciliary portion of a combination home in existence at the time of the effective date of this act shall be exempt from physical plant minimum standards, unless the Department determines any such exemption to be an imminent hazard to health, safety and welfare of the residents. Any existing combination home shall have until January 1, 1983, to comply with all other standards, rules and regulations in effect January 1, 1982.

(6) Evaluation of Residents in Domiciliary Homes. — The Department of Human Resources shall prescribe the method of evaluation of residents in domiciliary homes in order to determine when any of these residents are in need of professional medical and nursing care as provided in licensed nursing homes.

(f) The Department of Human Resources shall have the power and duty to inspect and license home health agencies as provided by law.

(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; 1981, c. 586, s. 1; c. 614, s. 8; c. 833.)

Effect of Amendments. —

The first 1981 amendment added all of present subdivision (e)(1) following the first sentence.

The second 1981 amendment, effective July 1, 1981, substituted "North Carolina Medical Care Commission" for "Commission for Health Services" at the beginning of subdivision (e)(1)

and deleted the former second, third and fourth sentences of subdivision (e)(1), concerning giving notice prior to the inspection of nursing homes.

The third 1981 amendment, effective January 1, 1982, rewrote subdivisions (4) through (6) of subsection (e).

§ 130-9.7. Suspension of admissions to nursing home or domiciliary home.

(a) The Secretary of Human Resources may suspend the admission of any new patients or residents at any nursing home or domiciliary home, where the conditions of the nursing home or domiciliary home are detrimental to the health or safety of the patient or resident. Such suspension shall be for the period determined by the Secretary. Such suspension shall remain in effect until the Secretary is satisfied that conditions or circumstances merit the removing of the suspension.

(b) This section shall be in addition to authority to suspend or revoke the license of the home.

(c) For the purpose of this section, the words "nursing home" and "domiciliary home" shall have the same meaning as defined in G.S. 130-9(e) and G.S. 131D-2, as appropriate.

(d) In imposing the sanctions authorized by subsection (a) of this section, the Secretary shall consider the following factors:

- (1) The degree of sanctions necessary to insure compliance with G.S. 130-9, Article 30 of this Chapter or G.S. 131D-2 as appropriate, and rules and regulations adopted under those statutes.
- (2) The character and degree of impact of the conditions at the home on the health or safety of the patients or residents at the facility.

(e) The Secretary of Human Resources shall promulgate rules to implement this section. (1981, c. 667, ss. 1, 2.)

Editor's Note. — Session Laws 1981, c. 667, is effective upon ratification. The act was s. 3 provided that the act shall become effective ratified June 24, 1981. on January 1, 1982 except that G.S. 130-9.7(e)

§ 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:

- (1) To enforce the State health laws and the rules and regulations established under and pursuant to the Public Health Law of North Carolina by the Commission for Health Services.
- (2) To investigate the causes of epidemics, and of infectious, communicable, and other diseases affecting the public health so as to prevent, insofar as possible, such diseases; and to provide, under the rules and regulations of the Commission, for the detection, reporting, prevention, and control of communicable, infectious, occupational, or any other diseases or health hazards considered dangerous to the public health.
- (3) To develop and carry out, with the approval of the Department of Human Resources, reasonable health programs, not inconsistent with law, that may be necessary for the protection and promotion of the public health and the control of disease.
- (4) To make sanitary and health investigations and inspections authorized by this Chapter or by regulations prepared pursuant to said Chapter or authorized by other applicable provisions of law under the direction of the Department of Human Resources, including the making of such investigations and inspections in cooperation with local health departments.
- (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.

- (6) To receive gifts or donations of money, securities, equipment, supplies, realty, or any other property of any kind or description which may be used by the Department for the purpose of carrying out its public health programs. Any property so donated for such purposes is to be used in carrying out the public health programs.
- (7) To acquire by purchase, devise or otherwise, such equipment, supplies and other property, real or personal, as shall be necessary to carry out the public health programs.
- (8) To continue the use of the official seal, the impression and description of which are on file in the office of the Secretary of State. Copies of the records and proceedings and copies of documents and papers in the possession of the Department may be authenticated with the seal of the Department, attested by the signature or a facsimile of the signature of the Secretary of Human Resources, and when so authenticated shall be received in evidence to the same extent and effect as the originals.
- (9) To disseminate to the general public, through any desirable and feasible means, information in all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of documents, reports, bulletins and health information materials shall remain in the Department to be used to replace said materials.
- (10) To be the health advisors of the State, and to advise State officials in regard to the location, sanitary construction, and health management of all State institutions, and to direct the attention of the State to such health matters as in their judgment affect the industries, property, health, and lives of the people of the State. The staff shall make or cause to be made an inspection at least once in each year, and may at such other times as it may be requested to do so by the Department of Human Resources or other State agency or institution, of public institutions and facilities including those subject to license or inspection by such Department of Human Resources or other State agency or institution. The staff shall make a report as to the health conditions of such agencies or institutions, with suggestions and recommendations, to their respective boards of directors or trustees and/or the licensing or inspecting authority; and it shall be the duty of the persons in immediate charge of said institutions or facilities to furnish all assistance necessary for a thorough inspection.
- (11) To be the nutrition advisors to the institutions owned and operated by the State, or any county, and to advise said institutions in regard to the nutritional adequacy of diets served to the patients or inmates therein.
- (12) To make a biennial report to the General Assembly through the Governor.
- (13) To perform the duties set forth in G.S. 130-9(e) in accordance with rules and regulations established by the Commission for Health Services.
- (14) The Secretary of the Department of Human Resources may establish by regulation a schedule of co-payments related to income to be paid by a recipient for services provided by the Division of Health Services for the operation of: (a) Migrant Health Clinics and (b) Developmental Evaluation Centers.
- (15) The Secretary of the Department of Human Resources is hereby authorized and empowered to establish by regulation a charge to be paid by veterinarians or local health departments for rabies tags, links, and rivets. Such charge shall not exceed the actual cost of the

tags, links, and rivets. For purposes of this subsection, actual cost shall mean the actual purchase price to the Department for such items.

- (16) The Secretary of Human Resources may establish by regulation rates and fees for the sale of: (a) specimen containers; and (b) vaccines and other biologicals. The rates and fees shall not exceed the actual cost of such items. For purposes of this subsection, actual cost shall mean the actual purchase price for the Department for such items. (1957, c. 1357, s. 1; 1961, c. 51, s. 4; c. 833, s. 14; 1969, c. 982; 1973, c. 476, ss. 128, 138; 1979, c. 714, s. 2; 1981, c. 562, s. 4.)

Effect of Amendments. — The 1981 amendment added subsections (14), (15) and (16).

Session Laws 1981, c. 562, s. 10, contains a severability clause.

ARTICLE 3.

Local Health Departments.

§ 130-13. Provision of public health services.

CASE NOTES

Cited in *Casey v. Wake County*, 45 N.C. App. 522, 263 S.E.2d 360 (1980).

§ 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.

(c1) In those districts which do not have a staggered term structure, the county commissioner members of the district board, upon the expiration of the term of any member, may reappoint the member or appoint his successor to a one, two or three year term as appropriate to achieve a staggered term structure.

(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.

(i) A district board of health is authorized to provide liability insurance for the members of the board and the employees of the district health department. A district board of health is also authorized to contract for the services of an attorney to represent the board, the district health department and its employees, as may be appropriate. The purchase of liability insurance pursuant to this subsection waives both the district board of health's and the district health department's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. By entering into a liability insurance contract with the district board of health an insurer waives any defense based upon the governmental immunity of the district board of health or the 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; 1981, c. 238; c. 408.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, added subdivision (c1).

The second 1981 amendment added subsection (i).

§ 130-16. Compensation of board members.

The members of a local board of health may receive a per diem in such amount as shall be established by the county board of commissioners, and travel expenses not to exceed the amounts provided by G.S. 138-5 for attendance at official meetings and conferences, provided such per diem or travel is authorized by the board of commissioners. (1957, c. 1357, s. 1; 1971, c. 940, s. 1; 1981, c. 104.)

Effect of Amendments. — The 1981 amendment deleted "but no more than twenty dollars (\$20.00) per diem for members and twenty-five dollars (\$25.00) per diem for the chairman of the boards" preceding "and travel."

§ 130-17. Powers and duties of local boards; expenditures.

(a) The local boards of health shall have the immediate care and responsibility of the health interests of their county or district. They shall meet quarterly, and any three members of the board, or the chairman of the board, shall be authorized to call a special meeting of the board, through the local health director, whenever in their or his opinion the public health interests of the county or district require it. All expenditures shall be made in accordance with appropriations duly made under the provisions of the County Fiscal Control Act.

(b) The local boards of health shall adopt such rules, not inconsistent with law, as are necessary to protect and promote the public health. Where local rules regulate an area which is also regulated by rules of the Commission for Health Services or the Environmental Management Commission, the rules of the Commission for Health Services or the Environmental Management Commission shall prevail unless the local ground absorption sewage treatment and disposal rules are approved as provided by G.S. 130-166.65(c), or there is a local condition which in the opinion of the local board of health requires more stringent regulation in order to protect and promote the public health in which case the local board of health is directed to adopt such rules as are necessary to protect and promote the public health; provided, however, that North Carolina food-service sanitation regulations shall be uniform throughout the State except when there is a threat of food-borne illness. 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.

(c) The rules and regulations of a local board of health shall apply to municipalities within the area over which the local board has jurisdiction, but the local board shall not enact any rules and regulations applying to one municipality only, except where circumstances peculiar to that municipality require more stringent rules and regulations. Where municipal ordinances deal with subject matter also covered by rules and regulations of a local board of health having jurisdiction over an area which includes the municipality, and there is an emergency, or a condition or circumstance peculiar to the municipality requiring such action in the interest of public health, the municipal ordinance may be more stringent, but not less stringent, than the rules and regulations of the local board of health. In other instances where there is a conflict between the rules and regulations of the local board and the municipal ordinance, the rules and regulations of the local board of health shall prevail.

(d) Before any rules and regulations of a local board of health, or any amendments or alterations thereof, hereafter adopted, amended, or altered, shall have the force and effect of law, they shall be posted at the courthouse door of each county within the jurisdiction of the board of health, and a statement setting out the title of such rules and regulations together with a statement indicating that the same have been adopted, amended, or altered, and that a copy is posted at the courthouse door of each county within the jurisdiction of the said board of health and that a copy is on file in the office of each health department under the jurisdiction of the said board of health shall be published at least once a week for two successive weeks in a newspaper having general circulation within the area over which the board of health has jurisdiction.

(e) A local board of health may contract with any person, including any governmental agency, for the provision or receipt of public health services. A

local board of health may also impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate board or boards of county commissioners.

The fees collected under the authority of this subsection are to be deposited to the account of the health department so that they may be expended for public health purposes in accordance with the provisions of the County Fiscal Control Act. No individual employee is to receive any compensation over and above his regular salary as a result of rendering services for which a fee is charged. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7065; 1957, c. 1357, s. 1; 1959, c. 1024, s. 1; 1963, c. 1087; 1973, c. 476, s. 128; c. 508; 1977, c. 857, s. 2; 1981, c. 130, s. 2; c. 281; c. 949, s. 4.)

Local Modification. — By virtue of Session Laws 1981, c. 41, Franklin should be stricken from the replacement volume.

Cross References. — As to authority to regulate sewage treatment and disposal, see §§ 130-166.65, 130-166.70.

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, deleted "city," preceding "county or district" in the first and second sentences of subsection (a), and

deleted "(other than a city board of health)" preceding "shall not enact any rule" in the first sentence of subsection (c).

The second 1981 amendment, effective July 1, 1981, rewrote the first paragraph of subsection (e).

The third 1981 amendment, effective January 1, 1982, rewrote the first three sentences of subsection (b).

CASE NOTES

Quoted in *Casey v. Wake County*, 45 N.C. App. 522, 263 S.E.2d 360 (1980).

OPINIONS OF ATTORNEY GENERAL

A local board of health may not regulate the production, processing and distribution of "Grade A" fluid milk and milk

products. — See opinion of Attorney General to Stacy Covil, Head, Sanitation Branch, Division of Health Services, 50 N.C.A.G. 42 (1980).

§ 130-21. Local appropriations.

CASE NOTES

Cited in *Casey v. Wake County*, 45 N.C. App. 522, 263 S.E.2d 360 (1980).

ARTICLE 3A.

Board of Health in a Consolidated City-County.

§§ 130-23.1 to 130-23.4: Repealed by Session Laws 1981, c. 130, s. 3, effective July 1, 1981.

ARTICLE 4.

Incorporation of Health Codes by Reference.

§ 130-24: Repealed by Session Laws 1981, c. 614, s. 11, effective July 1, 1981.

§ 130-24.1. Adoption by reference.

(a) The Commission for Health Services, may, in its rules and regulations promulgated under authority of this Chapter, adopt by reference any code or parts thereof, any federal regulations or parts thereof, any code, standards, or regulation which has been adopted by any other agency of this State or any agency of the United States or by a generally recognized organization or association.

(b) Any adoption by reference by the Commission for Health Services shall be in accordance with G.S. Chapter 150A, known as the Administrative Procedure Act, including the filing of the adopted material.

(c) Any local board of health may, in its rules and regulations, adopt by reference any code, standard, or regulation which has been adopted by any other agency of this State or any agency of the United States or by a generally recognized association. Copies of any material adopted by reference by a local board of health shall be filed by the local board of health with the Department of Human Resources and the clerk of superior court in the county or counties within the jurisdiction of the local board of health. (1981, c. 614, s. 11.)

Editor's Note. — Session Laws 1981, c. 614, s. 23, makes this section effective on July 1, 1981.

§§ 130-25, 130-26: Repealed by Session Laws 1981, c. 614, s. 11, effective July 1, 1981.

ARTICLE 7.

Vital Statistics.

§ 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 Chief Medical Examiner 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; 1981, c. 187, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "Chief Medical Examiner" for

"Secretary of Human Resources" in the last sentence of subsection (e).

§ 130-50. Birth registration.

OPINIONS OF ATTORNEY GENERAL

Compliance with the provisions of subsection (f) of this section is not sufficient, standing alone, to establish paternity of an illegitimate child for the purpose of

qualifying for aid to families with dependent children. — See opinion of Attorney General to Dr. Sarah T. Morrow, Secretary, Dep't of Human Resources, 50 N.C.A.G. 5 (1980).

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

- (a) The local registrar with respect to his registration district, shall:
- (1) Administer and enforce the provisions of this Article and any instructions, rules and regulations issued by the State Registrar.
 - (2) Furnish blank certificate forms, supplies, and instructions to persons who require them.
 - (3) Examine each certificate when submitted for record to ascertain if it has been completed in accordance with the provisions of this Article

and the instructions of the State Registrar. If a certificate is incomplete or unsatisfactory, he shall immediately notify the person responsible and require him to furnish the necessary information. All certificates, either of birth or death, shall be typed or written legibly in permanent black or blue-black ink.

- (4) Enter the date on which he received the certificate and sign his name as local registrar.
- (5) Within seven days of the date of his receipt of a certificate of birth or death, transmit to the register of deeds of the county or his agent a copy of each certificate registered by him. The copy of each certificate of birth so transmitted shall include the color or race of the father and mother if that information is contained on the State copy of the certificate of live birth. Such copies may be on blanks furnished by the State Registrar; or, in lieu thereof, he may cause photocopies to be made in such manner and form and on paper of such standard grade and quality as the register of deeds may approve. He may also make a copy of each certificate for his own records.
- (6) On the fifth day of each month, or more often if requested, send to the State Registrar all original certificates registered by him during the preceding month.
- (7) Maintain such records, make such reports, and perform such other duties as may be required by the 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. (1913, c. 109, s. 18; 1915, c. 85, s. 2; c. 164, s. 2; C. S., s. 7109; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673; 1949, c. 133; 1955, c. 951, ss. 20, 21; 1957, c. 1357, s. 1; 1963, c. 492, ss. 4, 8; 1969, c. 1031, s. 1; 1971, c. 444, s. 8; 1979, c. 95, s. 9; 1981, c. 554.)

Effect of Amendments.

The 1981 amendment, effective July 1, 1981, added the second sentence of subdivision (a)(5).

§ 130-69. Violations of Article; penalty.

Effect of Amendments. —

The 1979 amendatory act was originally made effective July 1, 1980. It was postponed to March 1, 1981, by Session Laws 1979, 2nd Sess., c. 1316; to April 15, 1981, by Session Laws 1981, c. 63; and to July 1, 1981, by Session Laws 1981, c. 179.

Session Laws 1979, c. 760, s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; and 1981, c. 179, s. 14, provides: "This act shall become effective on July 1, 1981, 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.***§ 130-82.2. Persons in charge of laboratories shall report positive tuberculosis tests.**

(a) The person in charge of any bacteriological or pathological laboratory rendering diagnostic service in this State shall report to the Department of Human Resources within seven days after diagnosis, the full name and other required information relating to the person whose sputa, gastric contents, or other specimens submitted for examination reveal the presence of tubercle bacilli. The report shall include the name and address of the physician or any person or agency referring the positive specimen for clinical diagnosis.

(b) The Commission for Health Services is authorized to make rules prescribing the form and content of the report.

(c) The information contained in the reports required by subsection (a) shall be provided by the Department of Human Resources to local health departments for public health purposes. The reports shall be confidential, shall not be public records as defined by G.S. 132-1, and shall be admissible into evidence in any court only upon order of the court under the procedure set forth in G.S. 8-53.

(d) The willful and unauthorized release by an employee or officer of any State or local agency, department, or commission of the information contained in the reports required by subsection (a) is a misdemeanor, punishable by a fine of fifty dollars (\$50.00), or imprisonment of 30 days or both. (1981, c. 81, s. 1.)

Editor's Note. — Session Laws 1981, c. 81, s. 2 makes the act effective July 1, 1981.

ARTICLE 9.

*North Carolina Immunization Law.***§ 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.

(c) All provisions of subsections (a) and (b) shall also apply to any student 18 years of age or older who attends school (K-12), whether public, private or religious. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1973, c. 632, s. 2; 1979, c. 56, s. 1; 1981, c. 44.)

Effect of Amendments. — The 1981 amendment added subsection (c).

ARTICLE 10.

Venereal Disease.

Part 2. Inflammation of the Eyes of the Newborn.

§ 130-108. Eyes of newborn to be treated; records.

Any person in attendance upon a case of childbirth shall instill or have instilled immediately upon its birth, in the eyes of the newborn, a solution or medication prescribed and approved by the Commission for Health Services for the purpose of preventing infection of the eyes of the newborn. It is the duty of every person in attendance, or the duty of the institution in which the birth takes place, to prepare such records concerning inflammation of the eyes of the newborn as the Commission for Health Services directs. (1917, c. 257, s. 3; C. S., s. 7182; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 614, s. 12.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, in the first sentence deleted "babe" preceding "a solution or" and substituted "Commission for Health Services" for "Department of Human Resources,"

in the second sentence substituted "is" for "shall be" and substituted "Commission for Health Services directs" for "Department of Human Resources shall direct."

§ 130-110. Duties of Commission for Health Services.

It shall be the duty of the Commission for Health Services to promulgate such rules and regulations as are necessary in the interest of the public health for the carrying out of this Article. (1917, c. 257, s. 5; C. S., s. 7184; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 614, s. 13.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted a provision at the end of the section that required the Com-

mission for Health Services to disseminate information and medication for preventing eye infections in newborns.

§ 130-112. Registration of midwives.

No person shall practice midwifery in North Carolina without a permit as required by Article 18 of this Chapter, and until registered with the local health director of the area in which such person intends to practice midwifery. The local health director shall notify the Department of Human Resources of such registration. (1917, c. 257, s. 8; C. S., s. 7187; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 614, s. 14; c. 676, s. 4.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, deleted "and medications" in the portion of the second sentence deleted by the second 1981 amendment.

The second 1981 amendment deleted "and the Department of Human Resources shall

furnish to such registered persons the necessary directions and medications for compliance with this Article and the rules and regulations of the Commission for Health Services" at the end of the second sentence.

Session Laws 1981, c. 676, s. 6, contains a severability clause.

ARTICLE 12.***Sanitary Districts.*****§ 130-126. Election and terms of office of sanitary districts.**

(a) The Department of Human Resources shall send a copy of the resolution creating the sanitary district to the board or boards of county commissioners of the county or counties in which all or part of the district is located. The board or boards of commissioners shall hold a meeting or joint meeting for the purpose of electing the members of the sanitary district board who must be residents of the district.

(b) The sanitary district board shall be composed of either three or five members as the county commissioners in their discretion shall determine. The members first appointed shall serve as the governing body of the sanitary district until the next regular election for municipal and special district officers as provided in G.S. 163-279, which occurs more than 90 days after their appointment. At that election, their successors shall be elected. The terms of the members shall be for two years or four years and may be staggered as determined by the board of county commissioners, so that some members are elected at each biennial election. The members of the sanitary district board shall be residents of the district. The board of county commissioners shall notify the county board of elections of any decision made under this subsection.

(c) The election shall be nonpartisan and decided by simple plurality as provided in G.S. 163-292 and shall be held and conducted by the county board of elections in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes. If the district is in more than one county, then the county board of elections of the county wherein the largest part of the district is located shall conduct the election for the entire district with the assistance and full cooperation of the boards of elections in the other counties.

(d) The board of elections shall certify the results of the election to the clerk of superior court. The clerk of superior court is authorized and directed to take and file the oaths of office of the board members elected.

(e) The newly elected members of the sanitary board shall take the oath of office on the first Monday in December following their election and shall serve for the term elected and until their successors are elected and qualified. (1927,

c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1357, s. 1; 1963, c. 644; 1973, c. 476, s. 128; 1981, c. 186, s. 1.)

Effect of Amendments. — The 1981 amendment rewrote this section.

§ 130-126.1. City governing body acting as sanitary district board.

(a) When the General Assembly incorporates a city or town that includes within its territory 50 percent or more of the territory of a sanitary district established pursuant to this Article, the General Assembly may provide in the incorporation act that the city or town governing body shall become ex officio the governing board of the sanitary district, if the existing sanitary district board adopts a resolution pursuant to this section. Such a resolution may be adopted at any time within the period beginning the day of ratification of the act incorporating the city or town and ending 270 days after the effective date of the incorporation act.

(b) To begin the process leading to the city or town board becoming ex officio the sanitary district board, the board of the sanitary district shall first adopt a preliminary resolution finding that the interests of the citizens of the sanitary district and of the city or town will be best served if both units of local government are governed by a single governing body. This resolution shall also set the date for a public hearing on the preliminary resolution.

(c) Upon adoption of this preliminary resolution, the chairman of the sanitary district board shall cause notice of the public hearing to be published once, at least 10 days before the hearing, in a newspaper of general circulation within the sanitary district. This notice shall set forth the time and place of the hearing and shall briefly describe its purpose. At the hearing, the board shall hear any citizen of the sanitary district or of the city or town who wishes to speak to the subject of the preliminary resolution.

(d) Within 30 days after the day of the public hearing, the sanitary district board may adopt a final resolution finding that the interests of the citizens of the sanitary district and of the city or town will be best served if both units are governed by a single board. This resolution shall set the date on which the terms of office of the members of the sanitary district board end and that board is dissolved and service by the ex officio board begins. This date may be the effective date of the incorporation of the city or town or any date within one year after the effective date. At that time, the sanitary district board is dissolved and the mayor and members of the governing body of the city or town become ex officio the board of the sanitary district. The mayor shall act ex officio as chairman of the sanitary district board.

(e) The chairman of the sanitary district board that adopts such a final resolution shall within 10 days after the day the resolution is adopted cause a copy of the resolution to be delivered to the mayor and each member of the city or town governing board and to the Commission for Health Services. (1981, c. 201.)

§ 130-127. Vacancy appointments to district boards.

Hereafter any vacancy that may exist in any sanitary district board of any sanitary district of the State for any cause shall be filled until the next election for sanitary district board members by the county commissioners of the county in which said sanitary district may be situated. Provided, that if the district is located in more than one county, the vacancy shall be filled by the county commissioners of the county from which the vacancy occurred. (1935, c. 357, s. 2; 1957, c. 1357, s. 1; 1981, c. 186, s. 2.)

Effect of Amendments. — The 1981 amendment substituted "election for sanitary district board members" for "general election" in the first sentence.

§ 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.
- (2) Repealed by Session Laws 1971, c. 780, s. 29.
- (2a) 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, within and without the corporate limits of the district, as may be necessary for the preservation of the public health and sanitary welfare outside the corporate limits of the district, within reasonable limitations, such utilities to be constructed, operated and maintained in accordance with rules and regulations promulgated by the Commission for Health Services.
 - a. The authority granted to a sanitary district by the provisions of this subsection is to be considered to be supplemental to the authority granted to a sanitary district by other provisions of law.
 - b. Actions heretofore taken by sanitary districts to acquire, construct, maintain and operate sewage collection and disposal systems of all types, water supply systems, water purification or treatment plants and other utilities within and without their respective corporate limits to provide service outside their respective corporate limits are hereby approved and validated.
 - c. This subsection shall apply only in counties with a population of 70,000 or greater, as determined by the most recent decennial federal census.
- (3) Repealed by Session Laws 1971, c. 780, s. 29.
- (4) To levy taxes on property having a situs in the district to carry out the powers and duties conferred and imposed on the district by law, and to pay the principal of and interest on bonds and notes of the district.
- (5) To acquire, either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.
- (6) To employ such engineers, counsel and other persons as may be necessary to carry into effect any projects undertaken and to fix the compensation of such persons.
- (7) To negotiate and enter into agreements with the owners of existing water supplies, sewerage systems or other such utilities as may be necessary to carry into effect the intent of this Article.
- (8) To formulate rules and regulations necessary for the proper functioning of the works of the district, but such rules and regulations

shall not conflict with rules and regulations promulgated by the Commission for Health Services, or the local board of health having jurisdiction over the area.

- (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.
- (10) After adoption of a plan as provided in G.S. 130-133, the sanitary district board, may, in its discretion, alter or modify such plan if, in the opinion of the Commission for Health Services, such alteration or modification does not constitute a material deviation from the objective of such plan. The alteration or modification must be approved by the Commission for Health Services, and may provide among other things for the construction of a waterline for the supply of any person, firm, corporation, city, town, village or political subdivision of the State either within or without the corporate limits of the district instead of a sewage disposal line and other improvements, where such alteration or modification would permit the disposal of sewage at a point nearer the district either within or without the corporate limits, thereby contaminating the prevailing water supply of the person, firm, corporation, city, town, village or political subdivision of the State to whom the water is to be supplied and would effect a saving to the district, and the sanitary district board may appropriate or reappropriate money of the district for carrying out such plans as altered or modified.
- (11) Subject to the approval of the Commission for Health Services, to engage in and undertake the prevention and eradication of diseases transmissible by mosquitoes by instituting programs for the eradication of the mosquito.

- (12) To collect and dispose of garbage, waste, and other refuse by contract or otherwise.
- (13) To establish a fire department for the protection of life and property within the district, to contract with any incorporated nonprofit volunteer or community fire department to furnish fire-fighting apparatus and personnel for use in the district, or to contract with cities, counties or other governmental units to furnish fire-fighting apparatus and personnel for use in the district.
- (13a) To provide rescue services, defined as to establish a rescue squad, to provide ambulance service, rescue service, or other emergency medical services, or to contract with cities, counties, other governmental units, or any incorporated nonprofit volunteer or community rescue squad to furnish such service for use in the district. The sanitary district shall be subject to G.S. 153A-250.
- (14) The district, and in the event the district enters into a contract with any other governmental unit for the collection and disposal of garbage, waste or other refuse or for fire protection, or rescue services as aforesaid, then, in that event, the district and such other governmental unit shall each have and enjoy all privileges and immunities that are now granted to other governmental units in exercising the governmental functions of collecting garbage, waste and other refuse, and furnishing fire protection or rescue services.
- (15) To use the income of the district, and if necessary, to cause taxes to be levied and collected upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection and rescue services in said district, such taxes to be levied and collected at the same time and in the same manner as taxes for debt service as provided in G.S. 130-141.
- (16) Repealed by Session Laws 1971, c. 780, s. 29.
- (17) To make rules and regulations in the interest of and for the promotion and protection of the public health and the welfare of the people within the sanitary district, and for such purposes to possess the following powers:
 - a. To require any person, firm or corporation owning, occupying or controlling improved real property within the district to connect with either or both, the water or sewage systems of the district when the local health director, having jurisdiction over the area in which the greater portion of the residents of the district reside, determines that the health of the people residing within the district will be endangered by a failure to connect.
 - b. To require any person, firm or corporation owning, occupying or controlling improved real property within the district where the water or sewerage systems of the district are not immediately available or it is impractical to connect therewith to install sanitary toilets, septic tanks and other health equipment or installations in accordance with the requirements of the Commission for Health Services.
 - c. To require any person, after notice and hearing, to abate any nuisance detrimental or injurious to the public health of the district. The person being ordered to abate the nuisance may appeal such order to the local board of health as provided in G.S. 130-20.
 - d. To abolish, or to regulate and control the use and occupancy of all pigsties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless such 500 feet be within the corporate limits of some city or town.

- e. Upon the noncompliance by any person, firm or corporation of any rule and regulation promulgated and enacted hereunder, the sanitary district board shall cause to be served upon the person, firm or corporation who fails to so comply a notice setting forth the rule and regulation and wherein the same is being violated, and such person, firm or corporation shall have a reasonable time, as determined by the local health director of the area within which the noncomplying person resides, from the service of such notice in which to comply with such rule and regulation.
 - f. Upon failure to comply with any rule and regulation of a sanitary district board within 30 days as directed in the notice provided for above, or within the time extended by the sanitary district board, such person, firm or corporation shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.
 - g. The sanitary district board is authorized to enforce the rules and regulations enacted or promulgated hereunder by criminal action or civil action, including injunctive relief.
- (18) For the purpose of promoting the public health, safety, morals, and the general welfare of the State, the sanitary district boards of the various sanitary districts of the State are hereby empowered, within the areas of said districts and not under the control of the United States or the State of North Carolina or any agency or instrumentality thereof, to designate, make, establish and constitute as zoning units any portions of said sanitary districts in accordance with the manner, method and procedure as follows:
- a. No sanitary district board, under the provisions of this subdivision, shall designate, make, establish and constitute any area in their respective sanitary districts a zoning area until a petition signed by two thirds of the qualified voters in said area as shown by the registration books used in the last general election, together with a petition signed by two thirds of the owners of the real property in said area as shown by the records in the office of the register of deeds for the county on the date said petition is filed with any sanitary district board, and a public hearing after 20 days' notice has been given. Such notice must be published in a newspaper of general circulation in said county at least two times, and a copy of said notice posted at the courthouse of said county and in three other public places in the sanitary district for 20 days before the date of the hearing. The petition must be accompanied by a map of any proposed zoning area.
 - b. When any portion of any sanitary district has been made, established and constituted a zoning area, as herein provided, the sanitary district boards as to any such zoning areas shall have, exercise and perform all of the rights, privileges, powers and duties granted to municipal corporations under Article 14, Chapter 160, of the General Statutes of North Carolina, as amended, provided, however, the sanitary district boards shall not be required to appoint any zoning commission or board of adjustment, and upon the failure to appoint either said sanitary district boards shall have, exercise and perform all the rights, privileges, powers and duties granted to said zoning commission and board of adjustment.
 - c. The governing body of any city, town or sanitary district is hereby authorized to enter into agreements with any other city, town or sanitary district for the establishment of a joint zoning commission, and to cooperate fully with each other.

- d. The sanitary district boards are hereby authorized to appropriate such amounts of money as they deem necessary to carry out the effective provisions of this subdivision, and are authorized to enforce its rules and regulations in order to give effect to this subdivision, and for such purposes to use the income of the district or cause taxes to be levied and collected upon the taxable property within the district to pay such costs.
 - e. None of the provisions of Chapter 176 of the Public Laws of North Carolina, Session 1931 (the proviso to G.S. 160-173), shall apply to any sanitary district.
 - f. This subdivision shall apply only to sanitary districts which adjoin and are contiguous to any incorporated town and are located within three miles or less of the boundaries of two other cities or towns.
- (19) To negotiate for and acquire any distribution system located outside the district when the water for such distribution system is furnished by the district pursuant to contract. If any such distribution system be acquired by a district it may continue the operation of such system even though it remains outside the district.
 - (20) To accept gifts of real and personal property for the purpose of operating a nonprofit cemetery; to own, operate, and maintain cemeteries with the property so donated; and to establish perpetual care funds for such cemeteries in the manner provided by G.S. 160-258 through 160-260.
 - (21) Repealed by Session Laws 1971, c. 780, s. 29.
 - (22) To dispose of any real or personal property belonging to it, according to the procedures prescribed in Article 12 of Chapter 160A of the General Statutes. For purposes of this subdivision, references in Article 12 of Chapter 160A to the "city", the "council", or a specific city official are deemed to refer, respectively, to the sanitary district, the sanitary district board, and the sanitary district official who most nearly performs the same duties performed by the specified city official. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; cc. 1130, 1145; 1951, c. 17, s. 1; c. 1035, s. 1; 1957, c. 1357, s. 1; 1961, cc. 669, 865, 1155; 1963, c. 1232; 1965, c. 496, s. 1; 1967, c. 632; c. 637, s. 1; c. 798, s. 2; 1969, cc. 478, 700, 944; 1971, c. 780, s. 29; 1973, c. 476, s. 128; 1979, c. 520, s. 2; c. 619, s. 7; 1981, c. 629; c. 655; c. 820, ss. 1-3; c. 898, ss. 1-4.)

Editor's Note. — Chapter 160, Article 14, and §§ 160-173 and 160-258 through 160-260, referred to in this section, have been repealed. See now Chapter 160A.

Effect of Amendments. —

Session Laws 1981, c. 629 added subdivision (22).

Session Laws 1981, c. 655, inserted "to contract with any incorporated nonprofit volun-

teer or community fire department to furnish fire-fighting apparatus and personnel for use in the district" in subdivision (13).

Session Laws 1981, c. 820, added subdivision (13a), inserted "or rescue services" wherever it appears in subdivision (14) and inserted "and rescue services" in subdivision (15).

Session Laws 1981, c. 898, added subsection (2a).

§ 130-130. Power to condemn property.

When in the opinion of the sanitary district board, it is necessary to procure real estate, right-of-way or easement within and/or without the corporate limits of the district for any of the improvements authorized by this Article, they may purchase the same or if the board and the owner or owners thereof are unable to agree upon its purchase and sale, or the amount of damage to be

awarded therefor, the board may condemn such real estate, right-of-way or easement within and/or without the corporate limits of the district and in so doing the ways, means and method and procedure of Chapter 40A of the General Statutes of the State of North Carolina entitled "Eminent Domain" shall apply. (1927, c. 100, s. 9; 1933, c. 8, s. 3; 1957, c. 1357, s. 1; 1981, c. 919, s. 13.)

Local Modification. — Bladen: 1981, c. 134; Brunswick: 1981, c. 283; Caswell: 1981, c. 941; Columbus: 1981, c. 270; Franklin and Granville: 1981, c. 941; Johnston: 1981, c. 459; Pender: 1981, c. 283; Person: 1981, c. 941; Sampson: 1981, c. 459; Vance and Warren: 1981, c. 941.

Effect of Amendments. — The 1981 amend-

ment, effective January 1, 1982, substituted "Chapter 40A" for "Chapter 40" near the end of the present section and deleted the former second sentence, providing that § 40-10 should not be applicable to condemnation proceedings under this section, and the former third sentence, relating to appeals in condemnation proceedings.

§ 130-145. Removal of member of board.

A petition carrying the signatures of twenty-five percent (25%) or more of the legal voters within a sanitary district requesting the removal from office of one or more members of a sanitary district board for malfeasance or nonfeasance in office may be filed with the board of county commissioners of the county in which all or the greater portion of the legal voters of a sanitary district are located. Upon receipt of such petition, the board of county commissioners, or boards of county commissioners if the district is located in more than one county, shall meet or meet jointly if more than one board, and adopt a resolution calling for an election on the question of removal and requesting the county board of elections to conduct the election for removal from office the members or member of the district named in the petition. In the event that more than one member of a sanitary district board is subjected to recall in an election, the names of each member of the board subjected to recall shall appear upon separate ballots. If in such recall election, a majority of the legal votes within the sanitary district shall be cast for the removal of any member or members of the sanitary district board subject to recall, such member or members shall cease to be a member or members of the sanitary district board, and the vacancy or vacancies so caused shall be immediately filled as hereinbefore provided. The expenses of holding a recall election shall be paid from the funds of the sanitary district. (1927, c. 100, s. 21; 1957, c. 1357, s. 1; 1981, c. 186, s. 3.)

Effect of Amendments. — The 1981 amendment rewrote the second sentence which formerly pertained to the same subject matter.

§ 130-147. Returns of elections.

In all elections provided for in this Article, the board of elections shall file copies of the returns with the boards of county commissioners and clerk of superior court in which the district is located; and with the sanitary district board. (1927, c. 100, s. 23; 1957, c. 1357, s. 1; 1981, c. 186, s. 4.)

Effect of Amendments. — The 1981 amendment rewrote this section.

§ 130-148. Procedure for extension of district.

(a) If, after any sanitary district shall have been created pursuant to the provisions of this Article or the provisions of this Article shall have been made applicable to any sanitary district, a petition signed by not less than fifteen per centum (15%) of the freeholders resident within any territory contiguous to and adjoining any such sanitary district shall be presented to the sanitary district board of such sanitary district praying that the territory described therein be annexed to and included within such sanitary district, the sanitary district board shall certify a copy thereof to the board of commissioners of the county in which such sanitary district is located and to the North Carolina Commission for Health Services, and said sanitary district board, through its chairman, shall request that a representative of the Commission for Health Services hold a joint public hearing with the sanitary district board on the question of such annexation. The chairman of the Commission for Health Services and the chairman of the sanitary district board shall name a time and place at which such public hearing shall be held. The chairman of said sanitary district board shall publish a notice of such public hearing once in a newspaper or newspapers published or circulating in the territory proposed to be annexed and in such sanitary district stating that a public hearing concerning such annexation will be held jointly by the Commission for Health Services and the sanitary district board on a date not less than 15 days after the publication of such notice. If, after the holding of such public hearing, the Commission for Health Services shall approve the annexation of the territory described in said petition, the Department of Human Resources shall advise said board of commissioners of such approval and, upon its receipt of such advice, the board of commissioners shall order and provide for the holding of a special election within the territory proposed to be annexed upon the question of such annexation.

If at or prior to such public hearing there shall be filed with the sanitary district board a petition signed by not less than fifteen per centum (15%) of the freeholders residing in the sanitary district requesting an election to be held therein on the question of such annexation, the sanitary district board shall certify a copy of such petition to the board of commissioners and the board of commissioners shall order and provide for the submission of such question to the qualified voters within the sanitary district. Any such election may be held on the same day as the election in the territory proposed to be annexed, and both such elections and the registration therefor may be held pursuant to a single notice.

The election shall be held by the county board of elections as soon as possible after the board of commissioners orders the election. The cost of the election shall be paid by the sanitary district. Registration in the area proposed for annexation shall be under the same procedure as G.S. 163-288.2.

Notice of the election shall be given as required by G.S. 163-33(8), and shall include a statement that the boundary lines of the territory to be annexed and the boundary lines of the sanitary district has been prepared by the district board and may be examined. The notice shall also state that if a majority of the qualified voters voting in the election favor annexation, both in the area to be annexed and in the sanitary district if an election is held therein, then the territory annexed shall be subject to all debts of the sanitary district.

The ballot shall be substantially as follows:
 "FOR annexation to the
 Sanitary District; AGAINST annexation to the
 Sanitary District."

If no election is held in the sanitary district, then upon majority favorable vote in the area to be annexed shall constitute the area a part of the district. If a vote is required in both the district and the area to be annexed, then upon

a majority favorable vote for annexation in both areas shall constitute the area a part of the district.

The board of elections shall certify the results of the election to the sanitary district board and the boards of county commissioners in which the district is located.

No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity be open to question in any court upon any ground unless the action or proceeding is commenced within 30 days after the certification of the results by the county board of elections.

If a sanitary district is located in more than one county, or if a sanitary district and all or any part of the territory proposed to be annexed is located in more than one county, or if the territory proposed to be annexed is located in more than one county, any petitions to be filed with, or requests to be made to, or actions or proceedings to be taken by the board of commissioners under the provisions of this section, shall be filed with, made to, or taken severally by the board of commissioners of each county in which any part of the sanitary district or of the territory to be annexed is located.

In any case where additional territory shall have been annexed to a sanitary district and the proposition of issuing bonds of the sanitary district after such annexation shall not be approved by the qualified voters at an election held within one year subsequent to such annexation fifty-one percent (51%) or more of the resident freeholders within the territory so annexed may petition the sanitary district board for the removal and exclusion of such territory from the sanitary district, provided, however, that no such petition may be filed after bonds of the sanitary district shall have been approved in an election held at any time after such annexation. If the sanitary district board shall approve such petition it shall certify a copy thereof to the Department of Human Resources requesting that the petition be granted and shall certify additional copies to the board or boards of commissioners of the county or counties in which all or any part of the sanitary district is located. If, after a public hearing, conducted under the same procedure as provided herein for the annexation of additional territory, the Commission for Health Services shall deem it advisable to comply with the request of such petition, said Commission shall adopt a resolution to that effect and shall redefine the boundaries of the sanitary district, which shall be the boundaries of the sanitary district as it existed before the annexation of such additional territory.

(b) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by not less than fifty-one per centum (51%) of the freeholders resident within the territory proposed to be annexed, it shall not be necessary to hold any election provided for by this section on the question of the extension of the boundaries of the sanitary district.

(c) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by the owners of all the real property within the territory proposed to be annexed, it shall not be necessary to hold any election or any hearings provided for by this section on the question of the extension of the boundaries of the sanitary district. (1927, c. 100, s. 24; 1943, c. 543; 1947, c. 463, s. 1; 1951, c. 897, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 2; 1961, c. 732; 1973, c. 476, s. 128; 1981, c. 186, s. 5.)

Effect of Amendments. — The 1981 amendment substituted the third through eighth paragraphs of subsection (a) for the former

third through ninth paragraphs of the subsection which pertained to similar subject matter.

§ 130-149. District and municipality extending boundaries and corporate limits simultaneously.

Whenever the boundaries of a sanitary district lie wholly within or are coterminous with the corporate limits of a city or town and such sanitary district provides the only public water supply and sewage disposal system for such city or town, the boundaries of such sanitary district and the corporate limits of such city or town may, if and when extended, be extended simultaneously in the following manner:

Twenty-five percent (25%) or more of the resident freeholders within the territory proposed to be annexed to the sanitary district and to the city or town may petition the sanitary district board and the governing board of the city or town setting forth the boundaries of the area proposed to be annexed and the objects it is proposed to accomplish, which petition may also include any area already within the corporate limits of the city or town but not already within the boundaries of the sanitary district. Upon receipt of such petition the sanitary district board and the governing board of the city or town shall meet jointly, and before passing upon the petition shall hold a public hearing upon the same and shall give prior notice of such hearing by posting a notice at the courthouse door of their county and also by publishing a notice at least once a week for four successive weeks in a newspaper published in said county. If at or after the public hearing the sanitary district board and the governing board of the city or town, acting jointly and with the approval of the Commission for Health Services, shall each approve the petition, then the question shall be submitted to a vote of all the qualified voters in the area or areas proposed to be annexed and in the sanitary district and in the city or town, voting as a whole. Such election to be held on date approved by the sanitary district board and by the governing board of the city or town.

At such election the qualified voters who present themselves to the election officials at the respective voting places shall be furnished with ballots upon which shall be written or printed the words "For Extension" and "Against Extension," and if at such election a majority of all the votes cast be "For Extension," then from and after the date of the declaration of the result of such election the territory and its citizens and property shall be subject to all debts, ordinances, and regulations in force in said sanitary district and in said city or town, and shall be entitled to the same privileges and benefits as other parts of said sanitary district and said city or town. The newly annexed territory shall be subject to the sanitary district and the city or town taxes levied for the fiscal year following the date of such annexation.

If at such election a majority of all the votes cast be "Against Extension" then there shall be no extension to either the boundaries of the sanitary district or the corporate limits of the city or town.

The costs of holding and conducting such election for annexation, as herein provided, shall be paid one half by the sanitary district and one half by the city or town.

Except as herein otherwise provided, when ordered by the sanitary district board and the governing board of the city or town acting jointly, the board of elections of the county in which the sanitary district and the city or town are located, shall call, hold, conduct and determine the result of such election, according to the provisions of Chapter 163 of the General Statutes as may be applicable.

In any cases where the boundaries of a sanitary district and the corporate limits of a city or town are extended as herein provided, and the proposition of issuing bonds of the sanitary district as enlarged, in order to provide adequate facilities for the annexed area or areas, as may be determined by the sanitary district board, shall not be approved by the voters at an election held within

one year subsequent to such extension, the territory so annexed may be disconnected and excluded from such sanitary district in the manner provided by G.S. 130-148; and if the territory so annexed is disconnected and excluded from such sanitary district it shall automatically and without any further procedure or action of any kind whatsoever be disconnected and excluded from such city or town, provided, however, if the petition also includes areas within the present corporate limits of the city or town but not within the present boundaries of the sanitary district, such areas already within the corporate limits of the city or town shall not be disconnected or excluded from such city or town under the provisions of this section.

The powers granted by this section shall be supplemental and additional to powers conferred by any other law and shall not be regarded as in derogation to any powers now existing. (1953, c. 977; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 186, s. 6.)

Effect of Amendments. — The 1981 amendment substituted "Chapter 163 of the General Statutes as may be applicable" for "G.S. 160-448" in the sixth paragraph.

§ 130-153. Further validation of dissolution of districts.

All actions prior to January 1, 1981, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health or Commission for Health Services, 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; 1981, c. 20, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment substituted "January 1, 1981" for "April 1, 1957" and inserted "or Commission for Health Services."

§ 130-156.2. Merger of district with contiguous city or town; election.

A sanitary district created under the provisions of this Article may merge with a contiguous city or town in the following manner:

- (1) The sanitary district board of commissioners and the governing board of the contiguous city or town may both resolve that it is advisable and feasible to call an election within both the sanitary district and said city or town to determine if the sanitary district and said contiguous city or town shall merge.
- (2) If the sanitary district board and the governing board of the contiguous city or town shall so resolve that it is advisable or expedient to call for such election, both boards shall adopt a resolution calling upon the board of county commissioners in the county or counties in which the district and the town or city or any portion thereof is located to call for an election on a date named by the sanitary district board and the governing board of the contiguous city or town after consultation with the appropriate boards of elections, and request said board of commissioners to call to be held on the said date an election within the sanitary district and an election within the contiguous city or town on the proposition of merger of the sanitary district with the contiguous city or town.
- (3) If an election is called as provided in subdivision (2) above, the boards of elections shall provide ballots for such election in substantially the following form:

"FOR merger of the Town of and the Sanitary District, if a majority of the registered voters of both the Sanitary District and the Town vote in favor of merger, the combined territories to be known as the Town of and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District; from and after merger residents of the District would enjoy all of the benefits of the municipality and would assume their proportionate share of the obligations of the Town as merged."

"AGAINST merger."

- (4) If at such election a majority of the registered voters of the sanitary district who shall vote thereon at such election shall vote in favor of the proposition submitted, and if a majority of the registered voters of the contiguous city or town who shall vote thereon at such election shall vote in favor of the proposition submitted, the sanitary district shall merge with the city or town on July 1 following said election. Should the majority of the registered voters of either the sanitary district or the contiguous city or town vote against the proposition, then the merger authorized under this statute shall not be effected. The sanitary district board and governing board of the contiguous city or town may, however, adopt resolutions and call for election on similar propositions of merger at any time not less than one year from the date of the last election thereon.
- (5) If the majority of the registered voters shall vote at said election of both the sanitary district and the contiguous city or town vote in favor of said merger, and the merger becomes effective the following July 1, the city or town shall then assume all of the obligations of the sanitary district, and the sanitary district shall convey all property rights to the city or town, and a vote for such merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger. The residents of the sanitary district shall from and after July 1 following the said election enjoy all of the benefits of the municipality and shall after that date assume their share of the obligations of the city as merged with the sanitary district. All taxes levied and collected by the city or town from and after the effective date of the merger shall be levied and collected uniformly in all of the territory embraced in the enlarged municipality.
- (6) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the construction of water systems and the proportion which was incurred for construction of sewerage disposal systems. Upon making such determination, the governing board shall send a certified copy to the local government commission in order that said commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G.S. 160-383.
- (7) The board of county commissioners shall request the appropriate board of elections to hold and conduct the election. All qualified voters of the city and the sanitary district shall be eligible to vote if the election is called in both areas as authorized in subdivision (1).
- (8) Notice of the election shall be given as required in G.S. 163-33(8). The board of elections may, in its discretion, use either method of registration set out in G.S. 163-288.2 if it deems a special registration is desirable in the sanitary district or in the city or town. (1961, c. 866; 1981, c. 186, s. 7.)

Effect of Amendments.— The 1981 amendment inserted "after consultation with the appropriate board of elections" near the middle of subdivision (2), substituted "boards of elec-

tions" for "board of commissioners of such county" in the introductory sentence of subdivision (3), and rewrote subdivisions (7) and (8).

§ 130-156.5. Merger of two contiguous sanitary districts.

Two sanitary districts created under the provisions of this Article that are contiguous with each other may merge in the following manner:

- (1) The board of commissioners of each sanitary district must first adopt a common proposed plan of merger of the two districts. The plan shall contain the name of the new or successor sanitary district, designate the members of the merging boards who shall serve as the interim board of commissioners for the new or successor district until the next election required by G.S. 130-126(b) and 163-279, and any other matters the two boards deem necessary and proper to complete the merger, including whether one district shall be the successor or an entirely new district is to be created.
- (2) Such merger may become effective only if approved by the voters of the two sanitary districts. In order to call an election, both boards shall adopt a resolution calling upon the board of county commissioners in the county or counties in which the districts are located to call for an election on a date jointly named by the sanitary district boards after consultation with the appropriate boards of election and request said board of commissioners to call to be held on the said date an election within each sanitary district on the proposition of merger of the sanitary districts.
- (3) If an election is called as provided in subdivision (2) above, the board(s) of elections shall provide ballots for such election in substantially the following form:
 - ☐ FOR The merger of the Sanitary District and the Sanitary District into a single district to be known as the Sanitary District, in which all the property, assets, liabilities, obligations and indebtedness of the two districts become the property, assets, liabilities, obligations, and indebtedness of the Sanitary District.
 - ☐ AGAINST The merger of the Sanitary District and the Sanitary District into a single district to be known as the Sanitary District, in which all of the property, assets, liabilities, obligations, and indebtedness of the two districts become the property, assets, liabilities, obligations, and indebtedness of the Sanitary District.
- (4) If at such election a majority of the registered voters of each sanitary district who shall vote thereon shall vote in favor of the merger the two sanitary districts shall be merged on July 1 following said election. Should the majority of the registered voters of either sanitary district vote against the proposition, then the merger authorized under this section shall not be effected. The sanitary district boards may, however, adopt resolutions and call for election on similar propositions of merger at any time not less than one year from the date of the last election thereon.
- (5a) If the majority of the registered voters who shall vote at said election of both sanitary districts vote in favor of said merger and a new district is to be created, the merger becomes effective at 12:00 noon on the following July 1, and at that time:

- a. The two sanitary districts shall cease to exist as bodies politic and corporate, and the new sanitary district exists as a body politic and corporate.
 - b. All property, real and personal and mixed, belonging to the sanitary districts vests in, belongs to and is the property of the new sanitary district.
 - c. All judgments, liens, rights of liens and causes of action of any nature in favor of either sanitary district vest in and remain and inure to the benefit of the new sanitary district.
 - d. All rentals, taxes, assessments and any other funds, charges of [or] fees owing either of the sanitary districts are owed to and may be collected by the new sanitary district.
 - e. Any action, suit, or proceeding pending against, or having been instituted by, either of the sanitary districts shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The new sanitary district shall be a party to all these actions, suits and proceedings in the place and stead of the dissolved sanitary district and shall pay or cause to be paid any judgment rendered against either of the sanitary districts in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings.
 - f. All obligations of either of the sanitary districts, including outstanding indebtedness, are assumed by the new sanitary district and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the new sanitary district. The full faith and credit of the new sanitary district is deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of either of the sanitary districts, and all the taxable property within the new sanitary district shall be and remain subject to taxation for these payments.
 - g. All rules, regulations and policies of either of the sanitary districts shall continue in full force and effect until repealed or amended by the governing body of the new sanitary district.
- (5b) If the majority of the registered voters who shall vote at said election of both sanitary districts vote in favor of said merger and one district is to be dissolved and the other district is to be a successor covering the territory of both, the merger becomes effective at 12:00 noon on the following July 1, and at that time:
- a. One sanitary district shall cease to exist as a body politic and corporate, and the successor sanitary district continues to exist as a body politic and corporate.
 - b. All property, real and personal and mixed, belonging to the sanitary districts vests in, belongs to and is the property of the successor sanitary district.
 - c. All judgments, liens, rights of liens and causes of action of any nature in favor of either sanitary district vest in and remain and inure to the benefit of the successor sanitary district.
 - d. All rentals, taxes, assessments and any other funds, charges or fees owing either of the sanitary districts are owed to and may be collected by the successor sanitary district.
 - e. Any action, suit, or proceeding pending against, or having been instituted by, either of the sanitary districts shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The successor sanitary district shall be a party to all these actions, suits and

proceedings in the place and stead of the dissolved sanitary district and shall pay or cause to be paid any judgment rendered against the sanitary district in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings.

- f. All obligations of either of the sanitary districts, including outstanding indebtedness, are assumed by the successor sanitary district and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the successor sanitary district. The full faith and credit of the successor sanitary district is deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of either of the sanitary districts, and all the taxable property within the successor sanitary district shall be and remain subject to taxation for these payments.
- g. All rules, regulations and policies of either of the sanitary districts shall continue in full force and effect until repealed or amended by the governing body of the successor sanitary district.
- (6) The board of county commissioners shall request the appropriate board of elections to hold and conduct the election. All qualified voters of the two sanitary districts shall be eligible to vote.
- (7) Notice of the election shall be given as required in G.S. 163-33(8). The board of elections may, in its discretion, use either method of registration set out in G.S. 163-288.2 if it deems a special registration is desirable in the sanitary districts. (1981, c. 951.)

ARTICLE 13.

Sanitary Sewage Disposal.

§ 130-160: Repealed by Session Laws 1981, c. 949, s. 1, effective January 1, 1982.

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.
 - (5a) "Hazardous waste landfill facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules promulgated under this Article.
 - (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, State agency, federal agency, 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 except that any sludges that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (PL 94-580) as amended, shall also be a solid waste for the purposes of this Article; or
 - c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the North Carolina General Statutes except that any such oils or other liquid hydrocarbons that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (PL 94-580) as amended, shall also be a solid waste for the purposes of this Article;
 - d. Any radioactive material as defined by the North Carolina Radiation Protection Act, G.S. 104E-1 through 104E-23; or
 - e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290) except that any specific mining waste that meets the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (PL 94-580) as amended, shall also be a solid waste for the purposes of this Article.
- (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; 1981, c. 704, s. 4.)

Effect of Amendments. —

The 1981 amendment added subdivision (5a), inserted "State agency, federal agency" near the end of subdivision (10a), inserted the language beginning "except that any sludges" and ending "purposes of this Article" near the end of subparagraph b 3 of subdivision (16), added the language beginning "except that any such oils" at the end of paragraph c of subdivision (16), and added the language beginning "except that

any specific mining waste" at the end of paragraph e of subdivision (16).

Session Laws 1981, c. 704, ss. 1 and 2, provide:

"Section 1. Short title. This act may be referred to as the Waste Management Act of 1981.

"Sec. 2. Purpose. The purpose of this act is to provide for a comprehensive system for management of hazardous and low-level radioactive

waste in North Carolina as reflected in the 1981 Report of the Governor's Task Force on Waste Management."

Session Laws 1981, c. 704, s. 26, provides that

the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

OPINIONS OF ATTORNEY GENERAL

A city or county cannot enact an ordinance which prohibits the establishment of a hazardous waste facility within its city or county limits. — See opin-

ion of Attorney General to O.W. Strickland, Head, Solid & Hazardous Waste Management Branch, Environmental Health Section, 49 N.C.A.G. 178 (1980).

§ 130-166.17A. Conveyance of land used for hazardous waste landfill facility to the State.

(a) No land may be used for a commercial hazardous waste landfill facility until fee simple title to the land has been conveyed to the State of North Carolina. In consideration for such conveyance, the State shall enter into a lease agreement with the grantor for a term equal to the estimated life of the facility in which the State will be the lessor and the grantor the lessee. Such lease agreement shall specify that for an annual rent of fifty dollars (\$50.00), the lessee shall be allowed to use the land for the development and operation of a hazardous waste landfill facility. Such lease agreement shall provide that the lessor or any person authorized by the lessor shall at all times have the right to enter without a search warrant or permission of the lessee upon any and all parts of the premises for monitoring, inspection and all other purposes necessary to carry out the provisions of Chapter 130, Article 13B. The lessee shall remain fully liable for all damages, losses, personal injury or property damage which may result or arise out of the lessee's operation of the facility, and for compliance with regulatory requirements concerning insurance, bonding for closure and post-closure costs, monitoring and other financial or health and safety requirements as required by applicable law and regulations. The State, as lessor, shall be immune from liability except as otherwise provided by statute. The lease shall be transferable with the written consent of the lessor, which consent will not be unreasonably withheld. In the case of such a transfer of the lease, the transferee shall be subject to all terms and conditions that the State deems necessary to ensure compliance with applicable laws and regulations. If the lessee or any successor in interest fails in any material respect to comply with any applicable law, regulation, or permit condition, or with any term or condition of the lease, the State may terminate the lease after giving the lessee written notice specifically describing the failure to comply and upon providing the lessee a reasonable time to comply. If the lessee does not effect compliance within the reasonable time allowed, the State may reenter and take possession of the premises.

(b) Notwithstanding the termination of the lease by either the lessee or the lessor for any reason, the lessee shall remain liable for, and be obligated to perform, all acts necessary or required by law, regulation, permit conditions or the lease for the permanent closure of the site until the site has either been permanently closed or until a substitute operator has been secured and has assumed the obligations of the lessee.

(c) In the event of changes in laws or regulations applicable to the facility which make continued operation by the lessee impossible or economically infeasible, the lessee shall have the right to terminate the lease upon giving the State reasonable notice of not less than six months, in which case the lessor shall have the right to secure a substitute lessee and operator.

(d) In the event of termination of the lease by the lessor as provided in subsection (a) of this section, or by the lessee as provided in subsection (c) of this section, the lessee shall be paid the fair market value of any improvements made to the leased premises less the costs to the lessor resulting from termination of the lease and securing a substitute lessee and operator; provided, that the lessor shall have no obligation to secure a substitute lessee or operator and may require the lessee to permanently close the facility. (1981, c. 704, s. 5.)

Editor's Note. — As to short title and purpose of Session Laws 1981, c. 704, see § 130-166.16.

Session Laws 1981, c. 704, s. 26, provides that

the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 130-166.17B. Local ordinances prohibiting hazardous waste facilities invalid; petition to establish facility.

(a) Notwithstanding any authority heretofore granted to counties, municipalities, or other local authorities to adopt local ordinances, including those regulating land use, any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a hazardous waste facility or a hazardous waste landfill facility which the Governor's Waste Management Board and the Governor have approved pursuant to the procedures in subsections (b) and (c) of this section, shall be invalid from the effective date of this amendment, but only to the extent necessary to effectuate the purposes of this Article. For the purpose of this section, the Governor's Waste Management Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the local governing body (i) of the city in which the proposed site is located, or (ii) of the county in which the proposed site is located (if the proposed site is outside city limits), as the case may be. The terms of the members appointed by the local governing body shall end upon the final determination made by the Governor under this section.

(b) When a hazardous waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance(s), the developer or operator of the facility may petition the Governor's Waste Management Board to review the matter. After receipt of a petition, the Board shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall recommend to the Governor that he either approve or disapprove the establishment and operation of the facility. After receiving a written recommendation from the Board, if the Governor makes the four findings set forth in subsection (c) of this section he shall approve the establishment or operation of the facility. If the Governor does not make all of the four findings set forth in subsection (c) of this section he shall disapprove the establishment or operation of the facility. The Governor shall affirm or disaffirm the findings of the Board and may make additional findings. The decision of the Governor shall be final unless a party to the action shall, pursuant to G.S. 7A-29, file a written appeal within 30 days of the date of such decision. The record on appeal shall include all materials and information submitted to or considered by the Governor in accordance with subsection (c) of this section. The scope of judicial review shall be limited to questions of abuse of discretion.

(c) When a petition as described in subsection (b) of this section has been filed with the Governor's Waste Management Board, the Board shall hold a public hearing to consider the petition. Such hearing shall be held in the affected locality in accordance with Chapter 150A, Article 2, within a reasonable time after receipt of the petition by the Board. The Board shall publish notice of the hearing twice a week for two successive weeks in a newspaper of

general circulation in the county where the proposed site is located. The final notice shall appear at least 15 days but not more than 25 days before the hearing date. Any interested person may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, any interested person may submit written material to the Board for its consideration. No later than 60 days after the hearing, the Board shall present its written recommendation to the Governor to approve or disapprove the facility. Before recommending that the Governor approve the facility, the Board must make the following findings:

- (1) That the proposed facility is needed in order to establish adequate capability for the management of hazardous waste generated in North Carolina and therefore serves the interests of the citizens of the State as a whole;
- (2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies;
- (3) That local citizens and elected officials have had adequate opportunity to participate in the siting process;
- (4) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility developer or operator has taken or consented to take any reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable ordinance(s).

The Board's written recommendation shall include a complete transcript of the hearing, all written material presented to the Board regarding the site location and the specific findings required in this subsection and any minority positions on the recommendation and the specific findings required in this subsection. The Governor shall issue his decision within a reasonable time following receipt of the recommendation from the Board and may consider any additional information he deems relevant. The Governor's decision shall be in writing and shall identify the material submitted to him by the Board plus any additional materials used in arriving at his decision.

The provisions of this section shall not apply to the siting of a hazardous waste landfill facility until the rules, regulations and standards for the operation of such facilities have been adopted by the appropriate State agencies. (1981, c. 704, s. 5.)

Editor's Note. — As to short title and purpose of Session Laws 1981, c. 704, see § 130-166.16.

Session Laws 1981, c. 704, s. 26, provides that

the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 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 waste "recycling, reduction or resource recovering facility" or as waste

"recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, 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 waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

- (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; and
- (6) The Department is authorized to charge and collect fees from operators of hazardous waste landfill facilities. Such fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes or regulations to remain responsible for post-closure monitoring and care. In establishing any such fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

(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 establish a complete and integrated regulatory scheme in the area of hazardous waste management and shall provide for:

- (1) Establishing criteria for hazardous waste, identifying the characteristics of hazardous waste and listing particular 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 (including requirements for sufficient availability of funds for facility closure and postclosure monitoring and corrective measures), 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) Within five days of receiving an application for a permit or for an amendment to an existing permit for a hazardous waste facility, the Department shall notify the clerk to the Board of County Commissioners or, if the facility is located within a city, the city clerk where the facility is proposed to be located. 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 hearings shall be in accordance with the appropriate federal regulations pursuant to the Resource Conservation and Recovery Act PL 94-580 as amended, and with Chapter 150A. Where the provisions of the federal regulations and Chapter 150A are inconsistent, the federal regulations shall apply. (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; 1981, c. 704, s. 6.)

Effect of Amendments. —

The 1981 amendment substituted "waste 'recycling, reduction or resource recovering facility' or as waste 'recycling, reduction or resource recovering equipment'" for

"'recycling or resource recovering facility' or as 'recycling or resource recovering equipment'" near the beginning of the first sentence of subdivision (3) of subsection (a), substituted "waste recycling, reduction or resource recovering pro-

cess" for "resource recovering or recycling process" near the end of the second sentence of subdivision (3) of subsection (a), and added subdivision (6) of subsection (a). The amendment also inserted "shall establish a complete and integrated regulatory scheme in the area of hazardous waste management and" in the second sentence of the introductory paragraph of subsection (c), substituted a comma for "and" preceding "identifying the characteristics" and added "and listing particular hazardous waste" in subdivision (1) of subsection (c), inserted "(including requirements for sufficient availability of funds for facility closure and postclosure monitoring and corrective measures)" near the end of subdivision (10) of sub-

section (c), added the first sentence of subsection (f), substituted "the appropriate federal regulations pursuant to the Resource Conservation and Recovery Act PL 94-580 as amended, and with G.S. 150A" for "Chapter 150A" at the end of the second sentence of subsection (f), and added the last sentence of subsection (f).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 130-166.16.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 130-166.18A. Additional requirements for hazardous waste facilities.

An applicant for a permit for a hazardous waste facility shall satisfy the Department that:

- (1) Any hazardous waste facility heretofore constructed or operated by the applicant (or any parent or subsidiary corporation if the applicant is a corporation) has been operated in accordance with sound waste management practices and in substantial compliance with federal and State laws and regulations; and
- (2) The applicant (or any parent or subsidiary corporation if the applicant is a corporation) is financially qualified to operate the subject hazardous waste facility. (1981, c. 704, s. 7.)

Editor's Note. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 130-166.16.

Session Laws 1981, c. 704, s. 26, provides that

the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 130-166.18B. Limitations on powers of local governments.

It is the intent of the General Assembly to prescribe a uniform system for the management of hazardous waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations, or otherwise, as provided in G.S. 143B-216.10(b). (1981, c. 704, s. 24.)

Editor's Note. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 130-166.16.

Session Laws 1981, c. 704, s. 26, provides that

the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 130-166.19A. Hazardous waste fund.

There is hereby established under the control and direction of the Department of Human Resources a nonreverting hazardous waste fund which shall be available to defray the cost to the State for monitoring and care of hazardous waste landfill facilities after the termination of the period during which the facility operator is required by applicable State and federal statutes or regu-

lations to remain responsible for post-closure monitoring and care. The establishment of this fund shall in no way be construed to relieve or reduce the liability of facility operators or any persons for damages caused by the facility. The fund shall be maintained by fees collected pursuant to the provisions of G.S. 130-166.18(a)(6). (1981, c. 704, s. 7.)

Editor's Note. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 130-166.16.

Session Laws 1981, c. 704, s. 26, provides that

the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 130-166.21. Recordation of permits for disposal of waste on land.

(a) Whenever the Department of Human Resources approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility 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 site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the register of deeds' office in the county or counties in which the land 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 land.

(d) The permit shall not be effective unless the certified copy is filed as required under subsection (b).

(e) When any sanitary landfill or a facility for the disposal of hazardous waste on land is sold, leased, conveyed or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a sanitary landfill or a disposal site for hazardous waste and a reference by book and page to the recordation of the permit. (1973, c. 444; c. 476, s. 128; 1977, 2nd Sess., c. 1216; 1981, c. 480, s. 3.)

Effect of Amendments. — The 1981 amendment, effective Oct. 1, 1981, substituted "approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility" for "approves a sanitary landfill site, the owner of the landfill site" near the middle of the first sentence of subsection (a), substituted "legal description of the site that" for "legal description of the landfill site which" near the middle of the second sentence of subsection (a), substituted "The

owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land" for "Any person granted a sanitary landfill site permit" at the beginning of subsection (b), substituted "the permit" for "such permit" near the middle of subsection (b), and substituted "land" for "landfill" near the end of subsection (b). The amendment also substituted "land" for "landfill site" at the end of subsection (c), and added subsection (e).

§ 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 or the environment.

(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 or the environment. 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; 1981, c. 704, s. 7.)

Effect of Amendments. — The 1981 amendment added "or the environment" at the end of subsection (a) and at the end of the first sentence of subsection (b).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 130-166.16.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 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; provided, that in establishing acceptable water table levels, location in relation to water supplies and population centers and appropriate buffer zones, the rules and standards promulgated under this Article shall be at least as comprehensive and may be more comprehensive than the hazardous waste program prescribed under the federal act. (1977, 2nd Sess., c. 1216; 1979, c. 464, s. 3; 1981, c. 704, s. 28.1.)

Effect of Amendments. —

The 1981 amendment added the proviso at the end of the second sentence of subsection (b).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 130-166.16.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 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 ten thousand dollars (\$10,000) 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.

(g) Any person who willfully violates the provisions of G.S. 130-166.21 shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided by law.

(h) Any person who willfully violates any provisions of this Article or the rules promulgated hereunder pertaining to the management of hazardous waste shall be guilty of a misdemeanor. (1977, 2nd Sess., c. 1205, s. 1; 1979, c. 464, s. 5; 1981, c. 480, s. 4; c. 704, s. 7.)

Effect of Amendments. —

The first 1981 amendment, effective Oct. 1, 1981, added subsection (g).

The second 1981 amendment substituted "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)" in the third sentence of subsection (b), and added subsection (h).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 130-166.16.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

ARTICLE 13C.

Ground Absorption Sewage Disposal System Act of 1973.

Cross Reference. — For present statute covering the subject matter of the repealed sections, see § 130-166.62 et seq.

Editor's Note. — This Article was rewritten

by Session Laws 1981, c. 949, s. 3, effective Jan. 1, 1982, and has been recodified as Article 13E of this chapter.

§§ 130-166.22 to 130-166.33: Repealed by Session Laws 1981, c. 949, s. 2, effective January 1, 1982.

Editor's Note. — This Article replaces former Article 13C, which was repealed by Session Laws 1981, c. 949, s. 2, effective Jan. 1, 1982. Where appropriate, the historical cita-

tions to the sections in the former Article have been added to corresponding sections in this Article.

ARTICLE 13D.

*North Carolina Drinking Water Act.***§ 130-166.39. Short title.**

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 130-166.41. Definitions.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 130-166.42. Scope.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 130-166.43. Drinking water regulations.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

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

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

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

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 130-166.46. Disinfection by public water systems.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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 40A of the General Statutes of North Carolina. (1979, c. 788, s. 1; 1981, c. 919, s. 14.)

Effect of Amendments. — The 1981 amendment, effective January 1, 1982, substituted "Chapter 40A" for "Chapter 40" near the end of the section.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

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

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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 of 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 or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system; 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 regulation 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, 1984, 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; 1981, c. 353, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment inserted "or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system" in subdivision (b)(1)b

and substituted "1984" for "1981" in the fourth sentence of subsection (c).

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

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

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

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

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 130-166.53. Prohibited acts.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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. 130-166.53. 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; 1981, c. 226.)

Effect of Amendments. — The 1981 amendment substituted "G.S. 130-166.53" for "G.S. 130-166.52" in subsection (a).

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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) Establish and collect fees to recover the costs of laboratory analyses performed for compliance with this act, said fees not to exceed two hundred dollars (\$200.00) for each analysis. (1979, c. 788, s. 1; 1981, c. 562, s. 9.)

Effect of Amendments. — The 1981 amendment rewrote subdivision (7). Session Laws 1981, c. 562, § 13 provides that the fee schedule set forth in subdivision (7) prior to the 1981 amendment, with the addition of a fee for the

analysis of total trihalomethanes of sixty dollars (\$60.00) shall remain effective until the Secretary establishes fees for the analyses.

Session Laws 1981, c. 562, § 10, contains a severability clause.

§ 130-166.56. Construction.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§§ 130-166.57 to 130-166.61: Reserved for future codification purposes.

ARTICLE 13E.

Ground Absorption Sewage Treatment and Disposal Act of 1981.

§ 130-166.62. Short title.

This Article shall be known and may be cited as the "Ground Absorption Sewage Treatment and Disposal Act of 1981." (1973, c. 452, s. 2; 1981, c. 949, s. 3.)

§ 130-166.63. Preamble.

The General Assembly finds and declares that continued installation, at a rapidly and constantly accelerating rate, of septic tanks and other types of ground absorption sewage treatment and disposal systems in a faulty or improper manner and in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems, has a detrimental effect on the public health through contamination of land, groundwater, and surface waters. Recognizing, however, that sewage can be rendered ecologically safe and the public health protected if such methods of sewage treatment and disposal are properly regulated and recognizing that ground absorption sewage treatment and disposal will continue to be necessary to meet the needs of an expanding population, the General Assembly intends hereby to insure the regulation of ground absorption sewage treatment and disposal systems so that such systems may continue to be used, where appropriate, without jeopardizing the public health. (1973, c. 452, s. 3; 1981, c. 949, s. 3.)

§ 130-166.64. Definitions.

As used herein, unless the context otherwise requires:

- (1) "Construction" means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions thereto which increase sewage flow.
- (2) "Health department" means any county, city, district, consolidated city-county or other health department authorized to be organized under Chapter 130 of the General Statutes.
- (3) "Land sales business" means any business engaged in sales of land where a ground absorption sewage treatment and disposal system may be required, provided, however, that this definition shall not include sales of land upon which any residence, place of business, or place of public assembly is being or has been constructed and for which an improvements permit has been issued pursuant to G.S. 130-166.2 [130-166.66].
- (4) "Location" means the initial placement for occupancy of a residence, place of business, or place of public assembly.
- (5) "Mobile home dealer" means every person or firm offering mobile homes for sale or lease within this State.
- (6) "Mobile home sales lot" means any place where two or more mobile homes are displayed and offered for sale or lease.
- (7) "Place of business" means any store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building, or any other place where people work.
- (8) "Place of public assembly" means any fairground, auditorium, stadium, church, campground, theater, or any other place where people assemble.
- (9) "Public or community sewage system" means a single system of sewage collection, treatment, and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.
- (10) "Relocation" means the displacement of a residence or place of business from one site to another.
- (11) "Residence" means any private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, mobile home, institution, or any other place where people reside.

- (12) "Sanitary system of sewage treatment and disposal" means a complete system of sewage treatment and disposal including approved privies, septic tank systems, connection to public or community sewage systems, incinerators, mechanical toilets, composting toilets, recycling toilets, mechanical aeration systems or other such systems.
- (13) "Septic tank system" means a ground absorption sewage treatment and disposal system consisting of a settling tank and a ground absorption field.
- (14) "Sewage" means and includes the liquid and solid human body waste, and liquids generated by domestic water-using fixtures and appliances, from any residence, place of business, or place of public assembly. For the purposes of this definition sewage shall not be construed to mean any industrial process wastewater or any other wastewater not considered to be domestic waste. (1973, c. 452, s. 4; 1981, c. 949, s. 3.)

§ 130-166.65. Sanitary sewage treatment and disposal; rules.

(a) Any person owning or controlling any single or multiple family residence, place of business, or a place of public assembly shall provide a sanitary system of sewage treatment and disposal. Any such sanitary sewage treatment and disposal system consisting of approved privies, septic tank systems, incinerators, mechanical toilets, composting toilets, recycling toilets, or other such systems serving single or multiple family residences, places of business, or places of public assembly, the effluent from which is not discharged to the land surface or surface waters, shall be approved by the Department of Human Resources under rules and regulations adopted by the Commission for Health Services.

(b) Any public or community sewage system and any system which discharges to the land surface or surface waters shall be approved by the Department of Natural Resources and Community Development under rules and regulations adopted by the Environmental Management Commission.

(c) Notwithstanding the provisions of subsection (a) of this section and the provisions of G.S. 130-17(b), any sanitary sewage treatment and 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 Department of Human Resources to review its proposed regulations concerning sanitary sewage treatment and disposal systems.
- (2) The Department of Human Resources has found that the regulations of the local board of health concerning sanitary sewage treatment and disposal systems are more stringent, but not less stringent, than the Commission's regulations, and are sufficient to safeguard the public health.

(d) The Department of Human Resources from time to time, upon its own motion or upon the request of a local board of health or upon the request of a citizen of an affected county, may review its findings under subsection (c) of this section. Subject to such review, the Department of Human Resources' finding that local regulations meet the requirements of subsection (c) of this section shall be binding and conclusive.

(e) The relationship between State and local regulations concerning sanitary sewage treatment and 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 (c) of this section.

(f) The Commission for Health Services rules and local board of health rules shall address at least the following: (i) Sewage characteristics; (ii) Design unit; (iii) Design capacity; (iv) Design volume; (v) Criteria for the design, installation, operation, maintenance and performance of sewage treatment and disposal systems; (vi) Soil morphology and drainage; (vii) Topography and landscape position; (viii) Depth to seasonally high water table, rock, and water impeding formations; (ix) Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequently flooding streams, lakes, swamps, and other bodies of surface or ground waters; (x) Density of sewage treatment and disposal systems in a geographical area; and (xi) Such other factors as will affect the effective operation and performance of the ground absorption method of sewage treatment and disposal. (1981, c. 949, s. 3; c. 1127, s. 47.)

Effect of Amendments. — The 1981 amendment deleted the original first paragraph of subsection (b), which related to use of septic tank systems where the design flow of sewage from residences, places of business, or places of

public assembly exceeds 1200 gallons per acre per day.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

§ 130-166.66. Improvements permit required.

(a) No person shall commence the construction or relocation of any residence, place of business, or place of public assembly nor shall any person locate, relocate or cause to be located or to be relocated any residence other than one exhibited for sale or stored for the purpose of later sale on a site in an area not served by a system of sewage treatment and disposal subject to rules adopted by the Environmental Management Commission without first obtaining an improvements permit from the local health department having jurisdiction.

(b) The local health department shall issue an improvements permit authorizing work to proceed and the installation or repair of a sewage treatment and disposal system when it has determined after a field investigation that such a system can be installed in compliance with rules adopted by the Commission for Health Services and/or rules of the local board of health having jurisdiction. (1973, c. 452, s. 5; c. 476, s. 128; 1981, c. 949, s. 3.)

§ 130-166.67. Certificate of completion.

No sewage treatment and disposal system subject to Commission for Health Services rules or rules of the local board of health having jurisdiction which is attempted to be installed shall be covered or placed into use until the local health department determines that the system as installed is in compliance with the rules and regulations governing such installations. Upon determining that a sewage treatment and disposal system is properly installed, the local health department shall issue a certificate of completion authorizing a residence, place of business, or place of public assembly to be occupied following construction, location, or relocation. Upon determining that an existing sewage treatment and disposal system is properly installed and operating satisfactorily in a mobile home park, the local health department shall issue a certificate of completion authorizing a residence to be located and occupied in a mobile home park. No person shall occupy a residence, place of business, place of public assembly, or mobile home in a mobile home park until a certificate of completion has been issued. (1973, c. 452, s. 6; 1981, c. 949, s. 3.)

§ 130-166.68. Improvements permit or certificate of completion required before other permits to be issued.

(a) Where construction, location or relocation is proposed to be done upon a residence, place of business, or place of public assembly, no permit required for electrical, plumbing, heating, air conditioning or other construction, location, or relocation activity under any provision of general or special law shall be issued until after an improvements permit has been issued.

(b) Where location or relocation is proposed for a mobile home in a mobile home park, no permit required for electrical, plumbing, heating, air conditioning, or other construction, location, or relocation activity under any provision of general or special law shall be issued until after a certificate of completion has been issued. (1973, c. 452, s. 7; 1981, c. 949, s. 3.)

§ 130-166.69. Limitation on electrical service.

It shall be unlawful for any person, partnership, firm, or corporation to allow permanent electrical service to a residence, place of business, or place of public assembly upon construction, location or relocation until the official electrical inspector with jurisdiction as provided in G.S. 143-143.2 certifies to the electrical supplier that the required improvements permit and certificate of completion have been issued. Temporary electrical service necessary for constructing a residence or place of business can be provided after an improvements permit has been issued. (1973, c. 452, s. 8; 1981, c. 949, s. 3.)

§ 130-166.70. Appeals procedure.

(a) Appeals concerning the interpretation and enforcement of rules adopted by the Commission for Health Services shall be governed by Chapter 150A.

(b) Appeals concerning the interpretation and enforcement of rules adopted by a local board of health in accordance with G.S. 130-166.65(c) or 130-17(b) shall be governed by subsections (c) and (d) of this section.

(c) Any person who wishes to take an appeal concerning the interpretation and enforcement of rules adopted by the local board of health shall have a right of appeal to the local board of health, provided such appeal is taken within 15 days of the challenged action. 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 upon which the challenged action was taken.

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 to affirm, modify or reverse the challenged action.

(d) Any person who wishes to contest a decision of the local board of health under subsection (c) of this section shall have a right of appeal to the district court having jurisdiction, if such appeal be made within 10 days after the date of the decision by the board. (1973, c. 452, ss. 9, 10; 1977, c. 239; 1981, c. 949, s. 3.)

§ 130-166.71. Duties of land sales businesses and mobile home dealers.

Each land sales business and mobile home dealer shall be required to post conspicuously at the office of each land sales business or mobile home sales lot the following notice in exactly this language:

"NOTICE: State law requires that the local health department determine the method and adequacy of sewage treatment and disposal before a residence or place of business is constructed or placed on the property." (1973, c. 452, s. 11; c. 476, s. 128; 1981, c. 949, s. 3.)

§ 130-166.72. Penalties.

Any person who knowingly violates any provision of this Article shall be guilty of a misdemeanor. (1973, c. 452, s. 13; 1981, c. 949, s. 3.)

Cross References. — For punishment of misdemeanors, see § 14-3.

ARTICLE 14.

Meat Markets.

§ 130-167. Regulation of places selling meat.

For the purpose of protecting the public health, the Commission for Health Services shall promulgate rules governing the sanitation of markets where meat food products (as defined in G.S. 106-549.15(14)) or poultry products (as defined in G.S. 106-549.51(26)) are prepared and sold. The rules shall also provide a system of grading such markets. All such markets shall satisfy minimum sanitation standards as prescribed by the rules in order to operate. The rules shall include only: the preparation and storage of all food at such markets; construction and cleanliness of the building, equipment and utensils; water supply; toilet facilities; handwashing facilities; disposal of waste; lighting and ventilation; vermin control; and health of employees. (1937, c. 244, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 463, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote this section.

§ 130-168: Repealed by Session Laws 1981, c. 463, s. 2, effective July 1, 1981.

§ 130-169. Application of Article.

The provisions of this Article shall not apply to markets where meat food products or poultry products are prepared and sold which are under continuous inspection by the North Carolina Department of Agriculture or the United States Department of Agriculture. (1937, c. 244, s. 4; 1957, c. 1357, s. 1; 1977, c. 706; 1981, c. 463, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "markets" for "meat markets, abattoirs, poultry processing plants, and other places," substituted "meat food products or poultry products"

for "meat, meat products, or poultry products," substituted "prepared and sold" for "prepared, handled, stored, or sold," and substituted "Department of Agriculture or" for "Department of Agriculture and/or."

ARTICLE 15A.

*Home Health Agencies.***§ 130-170.1. Definitions; licensing; regulations of Commission; appeals.**

(a) Definitions. — For the purposes of this section, a home health agency is a private organization, 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 subdivision (5) of this subsection, in a place of temporary or permanent residence used as the individual's home as follows:

- (1) Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
- (2) Physical, occupational or speech therapy;
- (3) Medical social services, home health aid services, and other therapeutic services;
- (4) Medical supplies, other than drugs and biologicals, and the use of medical appliances;
- (5) 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.

(b) Licensing of Home Health Agencies. — The Commission for Health Services shall develop and adopt rules and regulations containing standards for the care, treatment, health, safety, welfare, and comfort of patients in home health agencies and for the maintenance and operation of home health agencies which will promote safe and adequate care and treatment of the patients. The Department of Human Resources is authorized and directed to make inspections of such agencies and issue, deny or revoke annual licenses in accordance with its rules and regulations adopted under this section. The rules and regulations shall include, when appropriate, but shall not be limited to, provisions requiring the agency to have policies established by a professional group, including at least one licensed physician and one registered nurse, provisions governing the services the agency provides, provisions for the supervision of services by a licensed physician or registered nurse as appropriate, and maintenance of clinical records on all patients, including a plan of treatment prescribed by a licensed physician. Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Human Resources who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients or clients of the facility being inspected unless that patient, resident or client objects in writing to such review of his records. Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to

an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the patient, resident or client has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient, client or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section the patient, resident or client must be advised in writing that he has the right to object in writing to such release of information or review of his records and that by an objection in writing he may prohibit the inspection or release of his records.

(c) Decisions as to Licensing; Hearings; Appeals. — The Commission may adopt regulations providing for decisions as to granting, denying or revoking licenses by an administrative employee of the Department. The Commission shall adopt regulations for providing a hearing before the Commission or its designee whenever a hearing is requested by one who has been denied a license or has had his license revoked. The final decision after any appeal may be made by the Commission or by the Commission's designee as provided by the rules of the Commission. Appeals from the hearing decisions shall be to the Superior Court of Wake County and trial shall be before the judge without a jury. (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1981, c. 586, s. 2.)

Effect of Amendments. — The 1981 amendment added the language beginning "Notwithstanding the provisions of G.S. 8-53" in subsection (b).

ARTICLE 17.

Cancer Control Program.

§§ 130-180 to 130-186: Repealed by Session Laws 1981, c. 345, s. 1, effective October 1, 1981.

Cross References. As to present provisions concerning the cancer control program, see §§ 130-186.15 — 130-186.24.

ARTICLE 17A.

Cancer Studies.

§ 130-186.2: Repealed by Session Laws 1981, c. 345, s. 1, effective October 1, 1981.

Cross References. As to cancer control program, see §§ 130-186.15 — 130-186.24.

ARTICLE 17C.

*Cancer Control Program.***§ 130-186.15. Administration of program; rules.**

The Department of Human Resources shall administer a program for the prevention and treatment of cancer to the extent specified in this Article and the Commission for Health Services is authorized to promulgate rules to carry out such program. (1981, c. 345, s. 2.)

Editor's Note. — Session Laws 1981, c. 345, s. 3, makes the act effective October 1, 1981.

§ 130-186.16. Financial aid for diagnosis and treatment.

The Department of Human Resources shall furnish to indigent citizens of North Carolina, having or suspected of having cancer and who comply with the rules specified by the Commission for Health Services, financial aid for diagnosis and treatment. The Department of Human Resources may make available to all citizens facilities for diagnosis and treatment of cancer. Such diagnosis and treatment shall be given to patients in any medical facility in this State which meets the minimum requirements for cancer control established by the Commission for Health Services. In order to administer financial aid in the manner which will afford the greatest benefit to the patients, the Commission for Health Services is hereby authorized to promulgate rules specifying the terms and conditions upon which the patients may receive financial aid. The Department of Human Resources may develop procedures for carrying out the purposes of this Article. (1981, c. 345, s. 2.)

§ 130-186.17. Cancer clinics.

The Department of Human Resources is authorized to establish minimum standards and requirements for the staffing, equipment and operation of State-sponsored cancer clinics in medical facilities and local health departments to the end that the medical facilities and local health departments may adequately staff and equip their facilities to provide for the early diagnosis, prevention, and effective treatment of cancer. (1981, c. 345, s. 2.)

§ 130-186.18. Incidence reporting of cancer.

Every physician shall report to the Central Cancer Registry of the Department of Human Resources each diagnosis of cancer made in any person for whom the physician is professionally consulted. The reports shall be made within 60 days of diagnosis. Diagnosis and demographic information, as prescribed by the Commission for Health Services in consultation with the Cancer Committee of the North Carolina Medical Society, shall be included in the report. (1981, c. 345, s. 2.)

§ 130-186.19. Central Cancer Registry.

A medical facility may submit to the Department of Human Resources clinical, statistical and other records relating to the treatment and cure of cancer. This information shall be received by the Central Cancer Registry maintained by the Department of Human Resources. The Central Cancer Registry shall compile, tabulate and preserve statistical, clinical, and other reports and records relating to the incidence, treatment and cure of cancer received pur-

suant to this section and G.S. 130-186.18. The Central Cancer Registry shall provide assistance and consultation for public health work. (1981, c. 345, s. 2.)

§ 130-186.20. Immunity of persons who report cancer.

Any physican, medical facility or their employees who make a report pursuant to G.S. 130-186.18 or 130-186.19 to the Central Cancer Registry of the Department of Human Resources shall be immune from any civil or criminal liability that might otherwise be incurred or imposed for so doing. (1981, c. 345, s. 2.)

§ 130-186.21. Confidentiality of records.

The clinical records or reports of individual patients shall be confidential and shall not be public records open to inspection. The Commission for Health Services shall provide by rule for the use of the records and reports for medical research. (1981, c. 345, s. 2.)

§ 130-186.22. Cancer Committee of the North Carolina Medical Society.

In implementing this Article, the Department of Human Resources shall consult with the Cancer Committee of the North Carolina Medical Society, which shall consist of at least one physician from each congressional district, to the end that the cancer control program shall most effectively serve the welfare of the people of the State. Any proposed rules or reports affecting the operation of the cancer control program shall be reviewed by said Cancer Committee for comment prior to adoption or presentation. (1981, c. 345, s. 2.)

§ 130-186.23. Duties of Department of Human Resources.

The Department of Human Resources shall study the entire problem of cancer: its causes (including environmental factors), prevention, detection, diagnosis, and treatment. The Department of Human Resources shall provide or assure the availability of cancer educational resources to the health professions, interested private or public organizations and the public. (1981, c. 345, s. 2.)

§ 130-186.24. Reports by Secretary.

The Secretary of Human Resources shall make a report to the Governor and the General Assembly specifying the activities of the cancer control program and the budget thereof. Such report shall be made to the Governor annually, and to the General Assembly biennially. (1981, c. 345, s. 2.)

ARTICLE 18.

Midwives.

Cross References. — As to review and evaluation of the programs and functions authorized under this Article, see § 143-34.26.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as

amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws, 1981, c. 932, s. 1.

§ 130-187. Regulation of midwives.

No person shall practice midwifery in this State without a permit granted by the Department of Human Resources and also being under the supervision of a physician licensed to practice medicine. The Department shall issue a permit to only those applicants who have been certified as certified nurse midwives by the American College of Nurse-Midwives and who otherwise demonstrate sufficient training and experience. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 676, s. 2.)

Effect of Amendments. — The 1981 amendment rewrote this section.

Session Laws 1981, c. 676, s. 5 provides that any individual who has held a valid midwifery

permit in North Carolina for more than 10 years may continue to practice midwifery.

Session Laws 1981, c. 676, s. 6 contains a severability clause.

ARTICLE 20.***Surgical Operations on Inmates.***

§ 130-191: Transferred to § 148-22.2 by Session Laws 1981, c. 307, s. 8.

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

§ 130-191.1: Transferred to § 148-46.2 by Session Laws 1981, c. 307, s. 9.

ARTICLE 21.***Postmortem Medicolegal Examinations.*****§ 130-197. County medical examiners; appointment; term of office and vacancies.**

The Chief Medical Examiner shall appoint for each county in the State one or more medical examiners to serve for terms of three years and until their successors are appointed by the Chief Medical Examiner and have qualified. All vacancies in the office of medical examiner shall be filled by the Chief Medical Examiner for the unexpired terms. Each medical examiner shall be appointed from a list of two or more licensed doctors of medicine submitted by the component medical society of the county in which the appointment is to be made, or of the district in which the county is located. If no list of names is submitted by the society, the Chief Medical Examiner shall appoint a medical examiner or medical examiners from a list of licensed medical doctors of such county. In the event no licensed doctor accepts an appointment as medical examiner in a county, the Chief Medical Examiner may appoint one or more acting medical examiners from among the following: the local registrar, his deputy registrar, or subregistrar. Any acting medical examiner shall complete a course of training in the functions of the office within three months after appointment. In the event the medical examiner of any county, on account of illness or enforced absence or personal interest is unable to serve in any partic-

ular case or for a temporary period of time, the Chief Medical Examiner shall then designate some other qualified doctor of medicine in the county, or one or more of the following, to serve in the place of the regular medical examiner in making any examination or report required: the local registrar, his deputy registrar, or subregistrar. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 187, ss. 2-4.)

Effect of Amendments. — The 1981 amendment substituted "Chief Medical Examiner" for "Secretary of Human Resources" throughout the section, rewrote the fifth sentence which formerly provided for the appointment of the coroner as acting medical examiner, added the

sixth sentence and, in the last sentence, substituted "the" for "such" following "medicine in", substituted "one or more of the following" for "the coroner" and substituted "the local registrar, his deputy registrar, or subregistrar" for a period at the end of the sentence.

§ 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 Chief Medical Examiner 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 Chief Medical Examiner, 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 of Human Resources 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; 1981, c. 187, ss. 5, 6.)

Effect of Amendments. — The 1981 amendment substituted "Chief Medical Examiner" for "Secretary of Human Resources" in the first

and second sentences and inserted "of Human Resources" in the fourth sentence.

§ 130-200. When autopsies and other pathological examinations to be performed.

If, in the opinion of the Chief Medical Examiner or the medical examiner of the county wherein the body or anatomical material is first found under any of the circumstances set forth in G.S. 130-198, it is advisable and in the public interest that an autopsy or other pathologic study be made, or if an autopsy or other pathologic study is requested by the superior court district attorney or by any superior court judge on his own motion, or on a motion of any party, such autopsy or pathological study shall be made by the Chief Medical Examiner 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 Chief Medical Examiner or a competent pathologist or toxicologist appointed by the Chief Medical Examiner. 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. The Secretary is authorized to establish by regulation a fee, not to exceed three hundred dollars (\$300.00), to cover the cost of investigations, autopsies or pathological studies. (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; 1981, c. 187, s. 7; c. 562, p. 5.)

Effect of Amendments. — The first 1981 amendment substituted "Chief Medical Examiner" for "Secretary of Human Resources" throughout the section.

The second 1981 amendment added the last sentence of the second paragraph.

Session Laws 1981, c. 562, s. 10, contains a severability clause.

OPINIONS OF ATTORNEY GENERAL

The Chief Medical Examiner, after performing his duties as required by law, may release the body of the deceased to the spouse or next of kin who claims the body for final disposition even though he or she

may be suspected of, arrested for, or indicted for a criminal act in connection with the death of the deceased. See opinion of Attorney General to Page Hudson, M.D., Chief Medical Examiner, 50 N.C.A.G. 7 (1980).

§ 130-201. Rules and regulations.

(a) The Commission for Health Services shall promulgate rules and regulations in accordance with Chapter 150A, known as the Administrative Procedure Act, in order to carry out the intent and purposes of this Article.

(b) The Commission may also promulgate rules and regulations to allow the county medical examiners to use the facilities of the central laboratory and the services of its professional staff in their investigations. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 614, s. 15.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote the section.

§ 130-202. Reports and records received as evidence.

Reports of investigations made by the Chief Medical Examiner or his assistants or by medical examiners, and the records and reports of autopsies made under the authority of this Article, may be received as corroborative evidence, if admissible, in any court or other proceeding and copies of records, photographs, laboratory findings and records in the office of the Chief Medical Examiner or any medical examiner, when duly attested by the Chief Medical Examiner, or one of his assistant chief medical examiners, or the medical examiner in whose office the same are, shall be received as evidence in any court or other proceeding for any purpose for which the original could be received without any proof of the official character of the person whose name is signed thereto. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 187, s. 8.)

Effect of Amendments. — The 1981 amendment substituted "Chief Medical Examiner" for "Secretary of Human Resources" throughout the section.

§§ 130-202.3 to 130-202.7: Reserved for future codification purposes.

ARTICLE 21A.***Corneal Tissue Removal.*****§ 130-202.8. Authorization of medical examiner; conditions.**

A medical examiner or a regional pathologist may provide corneal tissue from a decedent under his jurisdiction to the North Carolina Eye and Human Tissue Bank or other donee specified in G.S. 90-220.3 under the following conditions:

- (1) Consent from next of kin is obtained in accordance with G.S. 90-220.2; or
- (2) A reasonable attempt to determine next of kin has failed, the medical examiner or regional pathologist believes that there are no next of kin to be contacted for consent, and no objection by the next of kin is known to the medical examiner or regional pathologist; and
- (3) The removal of the corneal tissue for transplant will not interfere with any subsequent course of investigation or autopsy or alter the post mortem facial appearance. (1981, c. 782, s. 1.)

§ 130-202.9. Immunity from liability.

Neither the medical examiner, the regional pathologist, nor the donee shall be liable in any civil action brought by the next of kin on the contention that authorization of next of kin was required to remove the corneal tissue, provided that the medical examiner or regional pathologist has made reasonable efforts to determine and locate next of kin prior to the donation. (1981, c. 782, s. 1.)

ARTICLE 22.

Remedies.

§ 130-204. Right of entry.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

ARTICLE 24.

Mosquito Control Districts.

§ 130-211. Nature of district; procedure for forming districts.

(a) A mosquito control district may be formed as hereinafter set out and when so formed, it shall be a body politic and corporate, and a political subdivision of the State of North Carolina and may sue and be sued in its corporate name.

(b) If the proposed district lies wholly within a single county, ten percent (10%) or more of the resident freeholders within the proposed district may petition the board of county commissioners of the county in which the proposed district lies setting forth the boundaries of the district and a suggested name for the district. Upon receipt of such petition, the board of county commissioners shall consider it and if the formation of the district appears feasible and in the interest of public health, it shall forward said petition or a copy thereof to the Department of Human Resources which shall consider the advisability of the formation of such district. If the Commission for Health Services deems the formation of such district advisable and in the interest of public health, it shall so notify the board of county commissioners whereupon said board shall give notice of a public hearing upon the question of the formation of such district by advertising the time, place and purpose of the hearing once each week for four successive weeks prior to such hearing in some newspaper either published in the county or having a general circulation therein. The public hearing shall be presided over by the chairman of the board of county commissioners and shall be attended by a representative of the Commission for Health Services, and said hearing may be continued from time to time as may be necessary to hear the proponents and opponents of the formation of such district. If, after such hearing and after consultation with the representative of the Commission for Health Services, the board of county commissioners deems it advisable that such district should be created and established, it shall submit to the qualified voters residing within the proposed district at an election called for that purpose, the question of whether or not the district shall be created. Upon determining that the district should be created and established, and prior to the submission of the question of the formation of the district to the voters of the proposed district, the board of county commissioners may determine the maximum amount of special tax to be levied for mosquito control purposes should the formation of the district be approved by the voters; provided, however, that in no event shall the maximum authorized levy exceed thirty-five cents (35¢) upon the one hundred dollar (\$100.00) assessed valuation. If the board of county commissioners determines that the maximum amount of special tax to be levied for mosquito control purposes should the voters approve the formation of the proposed district is to be less than thirty-five cents (35¢) on the

one hundred dollar (\$100.00) valuation, the maximum amount thus determined must appear on the ballot to be used by the voters voting on the question of the creation of the district.

Prior to the submission of the question of the formation of the district to the voters within the proposed district, the board of county commissioners may make minor deviations in defining the boundaries of the proposed district upon a determination that such minor deviation from the boundaries described in the petition is in the interest of public health, provided that ten percent (10%) of the resident freeholders within the revised boundaries shall have signed the petition proposing the creation of said district or additional resident freeholders within the revised boundaries of the proposed district shall sign the petition to bring the total number of petitioners within the proposed revised boundaries to not less than ten percent (10%) of the qualified electors therein.

The board of county commissioners shall request the county board of elections to hold the election herein provided for and shall pay the expense of the election. The election shall be held in accordance with the applicable provisions of Chapter 163 of the General Statutes. Notice shall be given as provided in G.S. 163-33(8).

The form of the question to be stated on the ballot shall be in substantially the following words:

☐ FOR creation of the [here insert name] Mosquito Control District and the levy of a special tax [here insert the words 'not to exceed' and the maximum amount of special tax to be levied for mosquito control purposes if the board of county commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation] for mosquito control purposes.

☐ AGAINST creation of the [here insert name] Mosquito Control District and the levy of a special tax [here insert the words 'not to exceed' and the maximum amount of special tax to be levied for mosquito control purposes if the board of county commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation] for mosquito control purposes."

Such affirmative and negative forms shall be printed on one ballot and the voters shall make a mark of an "X" in one of the squares preceding the form.

If a majority of the qualified voters voting at the election vote in favor of creation of the district and the levy of the special tax, the board of county commissioners shall declare that such district exists, and shall adopt a resolution to that effect.

(c) In the event the proposed mosquito control district shall embrace lands lying in two or more counties, the petition signed by the requisite number of resident freeholders within the proposed district shall be addressed to the Department of Human Resources. If the Commission for Health Services deems the formation of the proposed district to be in the public interest and in the interest of public health, it shall hold a public hearing or hearings within the proposed district after first giving notice of the time and place of such hearing or hearings by publication once each week for four successive weeks in some newspaper published or circulated in said proposed district. Public hearings shall be held in the courthouse of each of the counties in which any part of the proposed district is situated and may be held by any representative designated by the Commission for Health Services. After such hearing, if the Commission for Health Services deems the formation of the district to be in the public interest and beneficial to the public health, it shall order an election to be held upon the question of the formation of the district after first advertising the time of said election in the manner provided in subsection (b) hereof. At the request of the Commission for Health Services, the county commissioners of the several

counties in which the proposed district lies shall request the county board of elections to hold an election on the question in substantially the form of the ballot set forth in subsection (b) herein. Each county shall bear the expense of the election held therein. The board of elections shall certify the results to the county commissioners and the Commission for Health Services. If a majority of the votes favor creation of the district and the levy of the special tax, the Commission for Health Services shall declare the district created and the county commissioners shall enter the certification upon the minutes of the board. Registration shall be in accordance with G.S. 163-288.2. (1957, c. 1247, s. 2; 1959, c. 622, s. 1; 1973, c. 476, s. 128; 1981, c. 188, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment rewrote the third paragraph of subsection

(b) and rewrote the fifth through last sentences of subsection (c).

§ 130-213. Corporate powers.

A mosquito control district created in conformity with the provisions of this Article shall have and exercise through its board of commissioners the following corporate powers in addition to such incidental powers as may be necessary in order to discharge its corporate functions:

- (1) To levy ad valorem taxes upon all the taxable property within the district at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar (\$100.00) assessed valuation. Provided, that where a mosquito control district lies solely within a single county and includes the entire county, the board of county commissioners may, in their discretion, levy and determine the rate of ad valorem tax to be levied at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar (\$100.00) assessed valuation; provided further, that where a mosquito control district lies wholly within a single county and the maximum authorized special tax approved by the voters at the time of voting on the creation of the district was less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation, the ad valorem tax levy shall not exceed such lesser amount.

In the case of a district lying wholly within a single county, the valuations assessed by the county tax authorities shall be used by the mosquito control district or the board of county commissioners as the basis for its tax assessment and the mosquito control district or the board of county commissioners shall certify its tax rate to the county tax collector or supervisor in time to have such rate and the amount of tax due thereupon entered upon the official county tax receipts and stubs or duplicates. It shall be the duty of the county tax collector to collect said taxes at the same time as county taxes are collected and deposit same to the credit of the mosquito control district in a depository or depositories designated by the governing board of said district.

In the case of a district lying in two or more counties, the commissioners of the mosquito control district shall horizontally equalize the assessed valuations of the property in the several counties in which the district lies by adjusting the ratio of assessed valuation in the several counties to the true values of the taxable property in the several counties. From such adjusted and equalized valuations, any board of commissioners of any county may appeal to the Department of Revenue as in the case of an appeal by a property owner from a county board of equalization and review to the Department of Revenue as provided in Chapter 310 of the Public Laws of 1939 as amended.

Upon such equalized assessed valuations, the board of commissioners of the mosquito control district shall levy its tax and shall certify the amount of the levy against each taxpayer to the appropriate county tax collector or supervisor in time for the amount of such mosquito control district tax to be entered upon the county tax receipts and stubs or duplicates, and it shall be the duty of the several county tax collectors to collect said tax and deposit same to the credit of the mosquito control district in some depository or depositories designated by the commissioners of said district.

The taxes levied by virtue of this Article shall become due, shall be subject to the same discounts and penalties and interest, and shall have the same remedies for the collection of the taxes and for the refund of such taxes as provided for county and municipal ad valorem taxation by Chapter 310 of the Public Laws of 1939 as amended. Said taxes shall constitute a lien to the same extent and with the same force and effect as county and municipal ad valorem taxes and shall have equal priority with said taxes. Such taxes shall be deemed to be for a special purpose and for a necessary expense for which the special approval of the General Assembly is hereby given.

- (2) To accept gifts or endowments, and to receive federal and State grants-in-aid. All money or property acquired under this section or subdivision (1) of this section, or any other source, shall be deposited in a separate fund to be used solely for the purpose of carrying out the provisions of this Article. Funds so deposited shall be withdrawn by warrants signed by the chairman of the governing board of the district, and countersigned by the secretary.
- (3) To take all necessary and proper steps to prevent the breeding of mosquitoes and other arthropods of public health significance within the district, and to destroy adult mosquitoes and other arthropods of public health significance found within the district.
- (4) To conduct arthropod control measures in cooperation with individuals, firms, corporations, and federal, State, and local governmental agencies.
- (5) To enter all places within the district for the purpose of inspection and survey, whether on privately owned land or not, and to treat with proper means all places, wherever situated, that are breeding mosquitoes or other arthropods of public health importance, and to do all things necessary or incidental to the power herein granted.
- (6) To acquire, either by purchase, condemnation, or otherwise, and to hold real and personal property, easements, rights-of-way, or other property necessary or convenient for the accomplishing of the purpose of this Article. Any land which has been acquired by the board and improved by drainage, filling, diking, or other treatment, and other real property held by the board may be sold or leased by the board through the process of competitive bidding. All condemnation proceedings are to be in accordance with the provisions of Chapter 40A of the General Statutes of North Carolina.
- (7) To employ necessary personnel, fix salaries, purchase equipment, supplies and materials, make contracts, rent office or storage space, and perform other administrative functions necessary for the purpose of carrying out this Article.
- (8) To borrow money in anticipation of tax collection in gross amounts not to exceed the anticipated tax receipts for the fiscal year and to execute and deliver its notes or bonds therefor.
- (9) To reimburse members and employees of the board for actual expenditures incurred in authorized travel.

- (10) To employ a district superintendent who is an engineer, entomologist, or otherwise qualified as an arthropod control specialist. The professional qualifications of the superintendent must be approved by an authorized representative of the Secretary of Human Resources. (1957, c. 1247, s. 4; 1959, c. 622, s. 2; 1973, c. 476, ss. 128, 193; 1981, c. 919, s. 15.)

Effect of Amendments. — The 1981 amendment, effective January 1, 1982, substituted

"Chapter 40A" for "Chapter 40" in the last sentence of subdivision (6).

ARTICLE 26.

Regulation of Ambulance Services

Cross References. — As to review and evaluation of the programs and functions authorized under this Article, see § 143-34.26.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

ARTICLE 29.

Perinatal Health Care.

§ 130-254. Purpose.

CASE NOTES

Stated in *Stam v. State*, 47 N.C. App. 209, 267 S.E.2d 335 (1980).

ARTICLE 30.

Nursing Home Patients' Bill of Rights.

§ 130-275. Penalties; remedies.

(a) The Department shall impose an administrative penalty in accordance with provisions of this Article on any facility:

- (1) Which fails to comply with either the entire section of patients' rights listed in G.S. 130-266 or with any of these rights, the failure to comply with which endangers the health, safety or welfare of a patient.
- (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; 1981, c. 197.)

Effect of Amendments. — The 1981 amendment rewrote subdivision (a)(1).

Chapter 131.

Public Hospitals.

Article 1.

Orthopedic Hospital.

Sec.

131-2, 131-3. [Repealed.]

Article 2.

Hospitals in Counties, Townships, and Towns.

- 131-4. Establishment of public hospitals; election, tax, and bond issue.
- 131-5. Election on tax levy; collection and application of funds.
- 131-7. Trustees; term of office; qualification and election.
- 131-15. Condemnation of land.

Article 2A.

The County Hospital Act.

- 131-28.14. Condemnation proceedings.

Article 5.

County Tuberculosis Hospitals; Additional Method of Establishment.

- 131-39. Additional method of establishing; election.

Article 12.

Hospital Authorities Law.

- 131-94. Appointment, qualifications, and tenure of commissioners.
- 131-94.1. Appointment of commissioners in counties with a population of less than 75,000.
- 131-99. Eminent domain.

Article 13A.

Hospital Licensing Act.

- 131-126.6. Denial or revocation of license; hearings and review.
- 131-126.9. Inspections and consultations.

Sec.

- 131-126.11A. Hospital privileges.
- 131-126.11B. Procedures for applying for hospital privileges.
- 131-126.12. Information to be disclosed.
- 131-126.14. Judicial review.

Article 13C.

Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.

- 131-126.38B. Referendum on repeal of tax levy.

Article 17.

Medical Review Committee.

- 131-170. Introduction of records into evidence; testimony of members of committees.
- 131-171 to 131-174. [Reserved.]

Article 18.

Certificate of Need Law.

- 131-175. Findings of fact.
- 131-176. Definitions.
- 131-177. Department of Human Resources is designated State Health Planning and Development Agency; powers and duties.
- 131-178. Activities requiring certificates of need.
 - 131-178.1. Research activities.
 - 131-178.2. Health maintenance organization.
- 131-179. Nature of certificates of need.
- 131-180. Application.
- 131-181. Review criteria.
 - 131-181.1. Required approvals.
- 131-182. Review process.
- 131-185. Administrative and judicial review.
- 131-186. Withdrawal of a certificate of need.
- 131-187. Enforcement and sanctions.

ARTICLE 1.

Orthopedic Hospital.

§§ 131-2, 131-3: Repealed by Session Laws 1981, c. 50, s. 3.

ARTICLE 2.

*Hospitals in Counties, Townships, and Towns.***§ 131-4. Establishment of public hospitals; election, tax, and bond issue.**

Any county, township, or town may establish a public hospital in the following manner:

- (1) **Petition Presented.** — A petition may be presented to the governing body of any county, township, or town, signed by 200 resident freeholders of such county, township, or town, 150 of whom, in the case of a county, shall not be residents of the city, town, or village where it is proposed to locate such hospital, asking that an annual tax may be levied for the establishment and maintenance of a public hospital at a place in the county, township, or town named therein, or to be thereafter selected by the governing body of such county, township or town, and specifying the maximum amount of money proposed to be expended in purchasing or building such hospital.
- (2) **Election.**—Upon the filing of such petition, the governing body of the county, township or town shall request the board of elections to hold an election on the question of a tax to be levied. Notice of the election shall be given as provided in G.S. 163-33(8) and the question shall be as set forth in G.S. 131-5. The notice shall state the amount of the tax to be levied upon the property.

No action to question the validity of any such election shall be brought or maintained after the expiration of 60 days from the canvassing of said vote, and after the expiration of said period it shall be conclusively presumed that said election has been held in accordance with the requirements of this section, unless within said period such action is instituted.

- (3) **Tax to Be Levied.** — The tax to be levied under such election shall not exceed one fifteenth of one cent ($\frac{1}{15}$ of 1¢) on the dollar (\$1.00) for a period of time not exceeding 30 years, and shall be for the issue of county, township, or town bonds to provide funds for the purchase of a site and the erection thereon of a public hospital and hospital buildings. (1913, c. 42, s. 1; 1917, cc. 98, 268; 1919, c. 332, s. 1; C. S., s. 7255; 1923, c. 244, s. 1; 1929, c. 247, ss. 1, 2, 4; 1981, c. 189, s. 1.)

Effect of Amendments. — The 1981 amendment deleted "Ordered" following "Election" in the heading for subdivision (2), and rewrote the first paragraph of subdivision (2).

§ 131-5. Election on tax levy; collection and application of funds.

The board of elections of such county, township, or town shall submit to the qualified electors thereof, at a regular or special election, the question whether there shall be levied upon the assessed property of such county, township, or town a tax of one fifteenth of one cent ($\frac{1}{15}$ of 1¢) on the dollar (\$1.00) for the purchase of real estate for hospital purposes, for the construction of hospital buildings, and for maintaining same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted shall be printed with a statement substantially as follows:

☐ Yes.

For a cent tax for a bond issue for a public hospital and for maintenance of same.

☐ No.

If a majority of the qualified voters at such election on the proposition shall be in favor of a tax as submitted for a bond issue for a public hospital and for maintenance of same, the governing body shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the "Hospital Fund," and shall be paid out on the order of the hospital trustees for the purposes authorized by this Article, and for no other purposes whatever. (1913, c. 42, s. 2; 1917, c. 268; 1919, c. 332, s. 2; C. S., s. 7256; 1981, c. 189, s. 2.)

Effect of Amendments. — The 1981 amendment substituted "The board of elections" for "The governing body" at the beginning of the first sentence.

§ 131-7. Trustees; term of office; qualification and election.

Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, three of whom may be women, all residents of the county, township, or town, not more than four of said trustees to be residents of the city, town, or village in which said hospital is to be located, in case of a county hospital, who shall constitute a board of trustees for such public hospital. The appointed trustees shall hold their office until the next election for municipal and district officers which is held more than 90 days after their appointment. At that election seven trustees shall be elected for staggered terms. The two trustees receiving the highest number of votes shall be elected for a term of six years, the two receiving the second highest number of votes shall be elected for a term of four years, and the three receiving the third highest number of votes, shall be elected for a term of two years. Thereafter, as their terms expire, trustees shall be elected for terms of six years. The election shall be nonpartisan and decided by simple plurality and shall be held as provided in G.S. 163-279 (a) (1) and in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

No practicing physician may serve as a trustee.

The terms of any members now serving on such board are hereby adjusted so that their successors shall be elected in odd-numbered years beginning in 1981. For example, those trustees whose terms would normally expire in 1982 shall expire in 1981, those who would expire in 1984 shall expire in 1983, etc. (1913, c. 42, s. 3; 1917, c. 98, s. 2; c. 268; C. S., s. 7257; 1981, c. 189, s. 3.)

Effect of Amendments. — The 1981 amendment substituted the language beginning "The appointed trustees shall," following the first sentence, for former second and third sentences pertaining to the same subject matter.

§ 131-15. Condemnation of land.

If the board of hospital trustees and the owners of any property desired by them for hospital purposes cannot agree as to the price to be paid therefor, they shall report the fact to the governing body of the county, township, or town, and condemnation proceedings shall be instituted by such governing body and prosecuted in the name of the county, township, or town wherein such public hospital is to be located, by the attorney for such county, township, or town, under the provisions of the Chapter entitled Eminent Domain. (1913, c. 42, s. 7; 1917, c. 268; C. S., s. 7265; 1981, c. 919, s. 16.)

Cross References. —

As to eminent domain, see Chapter 40A.

Effect of Amendments. — The 1981 amendment, effective January 1, 1982, substituted

"the Chapter entitled Eminent Domain" for "law for the condemnation of land for railroads" at the end of the section.

ARTICLE 2A.

The County Hospital Act.§ 131-28.14. **Condemnation proceedings.**

If the board of hospital trustees and the owners of any property desired by the board for hospital purposes cannot agree as to the price to be paid therefor, the board shall report the fact to the board of commissioners of the county, and condemnation proceedings shall be instituted by such board of commissioners and prosecuted in the name of the county under the provisions of the Chapter entitled Eminent Domain. (1945, c. 506, s. 14; 1981, c. 919, s. 17.)

Cross References. — As to eminent domain, see Chapter 40A.**Effect of Amendments.** — The 1981 amendment, effective January 1, 1982, substituted

"the Chapter entitled Eminent Domain" for "law for the condemnation of land for railroads" at the end of the section.

ARTICLE 5.

County Tuberculosis Hospitals; Additional Method of Establishment.§ 131-39. **Additional method of establishing; election.**

The board of commissioners for each county is authorized to request the county board of elections to hold an election to determine whether the qualified voters of the county approve or disapprove of a county tubercular hospital as authorized under this Article.

The board of elections shall hold such election in accordance with the provisions of Chapter 163 of the General Statutes. The form of the ballot shall be:

☐ FOR County Tuberculosis Hospital.

☐ AGAINST County Tuberculosis Hospital."

The form of the ballot shall be as prescribed in G.S. 163-155(e).

If in said election a majority of the voters of said county registered for said election vote for said county tubercular hospital, then this Article and the following provisions thereof shall thenceforth be in full force and effect in said county; but if in said election a majority of the said registered voters shall not vote for said county tubercular hospital, then the provisions of this Article shall be in no further force and effect in said county. (1927, c. 208, s. 1; 1929, c. 164; 1981, c. 189, s. 4.)

Effect of Amendments. — The 1981 amendment substituted the present first two paragraphs for the former first four sentences of the section, pertaining to the same subject matter. It appears that the sentence preceding the last

paragraph, formerly the fifth sentence of the section, should have been deleted by the amendment. The reference to § 163-155(e) is erroneous.

ARTICLE 12.

*Hospital Authorities Law.***§ 131-94. Appointment, qualifications, and tenure of commissioners.**

An authority shall consist of not less than six and not more than 30 commissioners appointed by the mayor, or the chairman of the board of county commissioners, and he shall designate the first chairman.

One third of the commissioners who are first appointed shall be designated by the mayor, or the chairman of the board of county commissioners, to serve for terms of one year, one third to serve for terms of two years, and one third to serve for terms of three years respectively from the date of their appointment. Thereafter, the term of office shall be three years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. In the event of an increase in the number of commissioners, or in the event of a vacancy or vacancies in the membership of the board by expiration of term of office or otherwise, the remaining members of the board shall submit to the mayor, or the chairman of the board of county commissioners, nominations for appointments. The mayor, or the chairman of the board of county commissioners, shall appoint within a reasonable period of time a person or persons to fill the vacancy or vacancies created by an increase in the number of commissioners or a vacancy or vacancies in the membership of the board by expiration of a term of office or otherwise, but may successively require any number of additional nominations, and shall have power to appoint any person so nominated. All such vacancies shall be filled from such nominations. The commissioners, upon a finding that it is in the public interest, may adopt a resolution increasing the membership of the board by a fixed number and submit the certified resolution and nominations for appointments to the mayor or the chairman of the board of county commissioners for appointment of the new commissioners from the persons so nominated or from among such additional nominations as the mayor or the chairman of the board of county commissioners may require to be submitted from the commissioners. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk, or the chairman of the board of county commissioners shall file with the county clerk, a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. This section applies to all cities regardless of population, and to all hospital authorities established jointly by any city and any county, but applies only to counties with a population of 75,000 or greater according to the most recent decennial federal census. (1943, c. 780, s. 5; 1971, c. 799; 1973, c. 792; 1981, c. 525, s. 1.)

Effect of Amendments. — The 1981 amendment added the last sentence. Session Laws 1981, c. 525, s. 2 provided that the act is effective upon ratification but shall not be deemed to

invalidate the appointment of commissioners serving on hospital authorities at or before ratification.

§ 131-94.1. Appointment of commissioners in counties with a population of less than 75,000.

(a) An authority shall consist of not less than six and not more than 30 commissioners appointed by the board of county commissioners, which shall designate the first chairman.

(b) One third of the commissioners who are first appointed shall be designated by the board of county commissioners, to serve for the terms of one year, one third to serve for terms of two years, and one third to serve for terms of three years respectively from the date of their appointment. Thereafter, the term of office shall be three years. Vacancies shall be filled for the unexpired term. In selecting the persons to fill any vacancy created by the expiration of a term of office or otherwise the board of county commissioners may consider nominations submitted by the remaining members of the commissioners or the authority but is not bound by such nominations and may choose any qualified person.

(c) The members of the authority, upon a finding that it is in the public interest, may adopt a resolution increasing the membership of the authority by a fixed number and submit the certified resolution to the board of county commissioners for appointment of the new commissioners. The board of county commissioners may consider nominations submitted by the remaining members of the hospital authority when it selects commissioners to fill offices caused by an increase in the membership of the authority. The board of county commissioners shall appoint the new members within a reasonable time.

(d) A majority of the commissioners shall constitute a quorum. The board of county commissioners shall file with the county clerk, a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(e) When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts, and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

(f) This section applies only to counties with a population of less than 75,000, according to the most recent decennial federal census but does not apply to any authority established jointly by a city and a county. (1981, c. 525, s. 2.)

Editor's Note. — Session Laws 1981, c. 525, s. 3, provides that the act is effective upon ratification but shall not be deemed to invalidate

the appointment of commissioners serving on hospital authorities at or before ratification.

§ 131-99. Eminent domain.

The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this Article under the procedures of Chapter 40A. Property already devoted to a public use may be acquired, 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. (1943, c. 780, s. 10; 1971, c. 799; 1981, c. 919, s. 18.)

Effect of Amendments. — The 1981 amendment, effective January 1, 1982, substituted "under the procedures of Chapter 40A" for "after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and

necessary for public use" at the end of the first sentence and deleted the former second sentence, containing subdivisions (1) and (2) and relating to the procedure for exercise of the power of eminent domain.

ARTICLE 13A.

Hospital Licensing Act.

Cross References. — As to review and evaluation of the programs and functions authorized under this Article, see § 143-34.26.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 131-126.6. Denial or revocation of license; hearings and review.

(a) 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.

(b) This denial, suspension or revocation shall be in accordance with the rules of the Medical Care Commission and Chapter 150A, known as the Administrative Procedure Act. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1; 1981, c. 614, s. 16.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, designated the former first paragraph as subsection (a), and

rewrote the former second paragraph as subsection (b).

§ 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. Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Human Resources who make these inspections may review any writing or

other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients, residents or clients of the facility being inspected unless that patient, resident or client objects in writing to such review of his records. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the patient, resident or client has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Prior to releasing any information or allowing any inspections referred to in this section the patient, resident or client must be advised in writing that he has the right to object in writing to such release of information or review of his records and that by an objection in writing he may prohibit the inspection or release of his records. 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; 1981, c. 586, s. 3.)

Effect of Amendments. — The 1981 amendment added the second through fifth sentences.

§ 131-126.11A. Hospital privileges.

The granting or denial of privileges to practice in hospitals to licensed physicians and other practitioners licensed by the State of North Carolina to practice surgery on human beings, and the scope and conditions of such privileges, shall be determined by the governing body of the hospital based upon the applicant's education, training, experience, demonstrated competence and ability, judgement, character and the reasonable objectives and regulations of the hospital in which such privileges are sought. Nothing in this Article shall be deemed to mandate hospitals to grant or deny to any parties privileges to practice in said hospitals. (1981, c. 659, s. 10.)

§ 131-126.11B. Procedures for applying for hospital privileges.

The procedures to be followed by a licensed hospital in considering applications of practitioners licensed by the State of North Carolina to practice surgery on human beings, for privileges to practice in such hospitals shall be similar to those which are applicable to applications of physicians licensed to practice medicine. All practitioners must comply with all applicable medical

staff bylaws, rules and regulations, including the procedures governing qualification methods of selection and the delineation of privileges. It shall be unlawful for a practitioner with a license that is restricted in scope by such license to admit a patient to a hospital without written proof satisfactory to the governing body of the hospital that a physician licensed to practice medicine in North Carolina who is a member of the medical staff will be responsible for the medical needs of the patient. Such procedures shall be considered public records. Nothing herein shall be deemed to affect the privileges of dentists to practice in hospitals. (1981, c. 659, s. 10.)

§ 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. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient, resident, client or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section the patient, resident or client must be advised in writing that he has the right to object in writing to such release of information or review of his records and that by an objection in writing he may prohibit the inspection or release of his records. The Department is authorized to adopt rules and regulations to enforce the provisions of this Article. (1979, c. 207, s. 1; 1981, c. 586, s. 4.)

Effect of Amendments. — The 1981 amendment added the second through sixth sentences.

§ 131-126.14. Judicial review.

Any applicant or licensee who is dissatisfied with the decision of the Medical Care Commission as a result of the hearing provided in G.S. 131-126.6 may, within 30 days after a written copy of the decision is served, request judicial review under G.S. 150A, known as the Administrative Procedure Act. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1; 1981, c. 614, s. 17.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote the section.

ARTICLE 13C.

*Creation of Hospital Districts with Authority to
Issue Bonds and Levy Taxes for
Hospital Purposes.*

§ 131-126.38B. Referendum on repeal of tax levy.

(a) The board of commissioners of the county in which a hospital district was created under the provisions of this Article may, if a tax levy was authorized by referendum under G.S. 131-126.38, call a referendum on November 3, 1981, on the repeal of the authority to levy a tax. Such referendum may be called only if there are no outstanding general obligation bonds of the district.

(b) The question on the ballot shall be:

☐ FOR removal of the right of the board of county commissioners to levy and collect a tax in Hospital District.

☐ AGAINST removal of the right of the board of county commissioners to levy and collect a tax in Hospital District."

(c) The referendum shall be conducted in the same manner as bond elections held under G.S. 159-61. No new registration of voters shall be required.

(d) If a majority of the votes cast are in favor of the question, then beginning on the first day of the fiscal year following the date of the referendum, the board of county commissioner's shall have no authority to levy a tax in the hospital district unless the voters approve under G.S. 131-126.38. No such referendum may be held within one year of the date of a referendum under this section. (1981, c. 243.)

ARTICLE 17.

Medical Review Committee.

§ 131-170. Introduction of records into evidence; testimony of members of committees.

The proceedings of, records and materials produced by, and the materials considered by a committee are not subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by the committee, and no person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee nor should any person who testifies before the committee or who is a member of the committee be prevented from testifying as to matters within his knowledge, but the witness cannot be asked about his testimony before the committee or opinions formed by him as a result of the committee hearings. (1981, c. 725.)

§§ 131-171 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 Title XV of the Public Health Service Act 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; 1981, c. 651, s. 1.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1182, s. 4, as amended by Session Laws 1981, c. 1127, s. 30, makes the act effective January 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."

"Provided, that notwithstanding the previous

two paragraphs, this act shall apply to any project which is either:

- "(1) described in either of those two paragraphs; or
- "(2) exempt from this act because construction had commenced prior to June 16, 1978;

unless in either case described above, prior to July 1, 1983:

- "(1) sufficient land has been acquired for the project;
- "(2) all necessary building permits and zoning or subdivision approval have been obtained;
- "(3) a construction contract has been awarded and payments have been made on the construction contract; and
- "(4) either foundation walls for the project have been raised above grade level, or if a building or buildings existed on

that site on January 1, 1981, a contract has been signed to raze them and total partial demolition has taken place."

"(b) This section does not apply to any project required to be licensed under Article 13A of Chapter 131 of the General Statutes.

"(c) The provisions of this section are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair the remaining provisions."

Effect of Amendments. — The 1981 amendment, in subdivision (5), substituted "Title XV of the Public Health Service Act" for "P.L. 93-641."

Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply to the reviews of any certificate of need applications completed before October 1, 1981."

§ 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, unless they elect to apply for licensure under Chapter 131B of the General Statutes.
- (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.
- (2a) "Capital expenditure" means an expenditure which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.
- (3) "Certificate of need" means a written order of the Department setting forth the affirmative findings 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 in bed capacity" means (i) an increase or decrease in the total number of beds, (ii) a redistribution of beds among different categories, or (iii) a relocation of beds from one physical facility or site to another; if the change exceeds 10 beds or ten percent (10%) of bed capacity, whichever is less, in any two-year period.
- (6) Repealed by Session Laws 1981, c. 651, s. 2.
- (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, an approval with conditions, or denial of an application for a certificate of need.
- (10) "Health care facilities" means hospitals; skilled nursing facilities; kidney disease treatment centers, including freestanding hemodialysis units; intermediate care facilities, including intermediate care facilities for the mentally retarded or persons with related conditions; rehabilitation facilities; home health agencies; and ambulatory surgical facilities.
- (11) "Health maintenance organization (HMO)" means a public or private organization which has received its certificate of authority under Chapter 57B of the General Statutes and which either is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act or:
- 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 above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and
 - c. Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual 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 Title XV of the Public Health Service Act, 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 include psychiatric hospitals, as defined in subdivision (22) of this section, or tuberculosis hospitals, as defined in subdivision (27) of this section.
- (15) Repealed by Session Laws 1981, c. 651, s. 2.
- (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. This term includes intermediate care facilities for the mentally retarded or persons with related conditions such as epilepsy, cerebral palsy, or autism.
- (16a) "Major medical equipment" means a single unit or a single system of components with related functions which is used to provide medical and other health services and which costs more than four hundred thousand dollars (\$400,000). This does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of Section 1861(s) of that act. In determining whether medical equipment costs more than four hundred thousand dollars (\$400,000), the costs of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the cost shall be deemed to be the fair market value.
- (17) "New institutional health services" means:
- a. The construction, development, or other establishment of a new health care facility;
 - b. The obligation by or on behalf of a health care facility or a local health department established under Article 3 of Chapter 130 of the General Statutes of any capital expenditure, other than one to acquire an existing health care facility, which exceeds the expenditure minimum. Further, increases in approved capital expenditures, if they exceed the expenditure minimum, are also new institutional health services. The expenditure minimum is six hundred thousand dollars (\$600,000) for the 12-month period beginning October 1, 1979. For each 12-month period thereafter

the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds the expenditure minimum;

- c. The obligation of any capital expenditure by or on behalf of any health care facility which is associated with a change in bed capacity;
- d. The obligation of any capital expenditure by or on behalf of a health care facility which is associated with the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months or with the termination of a health service which was offered in or through the facility;
- e. A change in a project which was subject to review under paragraphs a, b, c, or d of this subdivision and for which a certificate of need had been issued, if the change is proposed within one year after the project was completed. For the purposes of this paragraph, a change in a project is a change in bed capacity, the addition of a health service, or the termination of a health service, regardless of whether a capital expenditure is associated with the change;
- f. The offering of a health service by or on behalf of a health care facility if the service was not offered by or on behalf of the health care facility in the previous 12 months and if the annual operating costs of the service equal or exceed the expenditure minimum. The expenditure minimum for annual operating costs is two hundred fifty thousand dollars (\$250,000) for the 12-month period beginning October 1, 1979. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index;
- g. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility;
- h. The acquisition by any person of major medical equipment not owned by or located in a health care facility if notice of the acquisition is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice, finds that the equipment will be used to provide services to inpatients of a hospital, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure;
- i. The use, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure, of major medical equipment which was acquired without a certificate of need, to treat inpatients of a hospital;
- j. The obligation of a capital expenditure by any person to acquire an existing health care facility, if a notice of intent is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice of intent, finds that there will be a change in bed capacity, the addition of a health service not offered by or on behalf of the facility within the previous 12 months, or the ter-

mination of a health service which was offered by or on behalf of the facility;

- k. A change in bed capacity, the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or on behalf of the facility, in a health care facility which was acquired without a certificate of need, if such change occurs within one year of the acquisition;
 - l. Notwithstanding the provisions of G.S. 131-176(17)h and j, the purchase, lease or acquisition of any of the following: any health care facility, or portion thereof; major medical equipment; a controlling interest in the health care facility, or portion thereof; or a controlling interest in major medical equipment. The aforesaid are new institutional health services if the asset was obtained under a certificate of need issued pursuant to G.S. 131-178.2.
 - m. Any conversion of nonhealth care facility beds to health care facility beds, regardless of whether a capital expenditure is associated with the conversion. A bed is a nonhealth care facility bed if a facility that contained only that type of bed would not be a health care facility. A bed is a health care facility bed if a facility that contained only that type of bed would be a health care facility.
- (18) "North Carolina State Health Coordinating Council" means the Council as defined by Title XV of the Public Health Service Act, 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.
 - (22a) "Rehabilitation facility" means a public or private inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision.
 - (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 Title XV of the Public Health Service Act, 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 Title XV of the Public Health Service Act, 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) Repealed by Session Laws 1981, c. 651, ss. 1, 2. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, ss. 1, 2; c. 1127, ss. 24-29.

Effect of Amendments. — The first 1981 amendment added ", unless they elect to apply for licensure under Chapter 131B of the General Statutes" at the end of the second sentence of subdivision (1), added subdivision (2a), deleted former subdivision (5) defining "Change of ownership," substituting therefor the definition of "Change in bed capacity," deleted subdivision (6) defining "Commencement of construction," substituted "and approval with conditions, or denial of an application for a certificate of need" for "a denial, and approval with conditions, or a deferral" in subdivision (9), rewrote subdivision (10) which formerly defined "Health care facility," inserted in the introductory language of subdivision (11) the language beginning "has received its certificate of authority," substituted "above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided" in subdivision (11) b for "in paragraph a of this subdivision to enrolled participants on a predetermined periodic rate basis," substituted "Title XV of the Public Health Service Act" for "P.L. 93-641" in subdivision (12), (18), (24) and (25), deleted "not" following "Such term does" near the beginning of the second sentence of subdivision

(14), deleted subdivision (15) defining "incur a financial obligation in relation to the offering of a new institutional health service," added the second sentence of subdivision (16), added division (16a), rewrote subdivision (17), added subdivision (22a), and deleted subdivision (28) defining "Undertake." Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply to the reviews of any certificate of need applications completed before October 1, 1981."

The second 1981 amendment substituted "four hundred thousand dollars (\$400,000)" for "one hundred fifty thousand dollars (\$150,000)" in the first and third sentences of subdivision (16a), "six hundred thousand dollars (\$600,000)" for "one hundred and fifty thousand dollars (\$150,000)" in the third sentence of paragraph b of subdivision (17), substituted "two hundred fifty thousand dollars (\$250,000)" for "seventy-five thousand dollars (\$75,000)" in the second sentence of paragraph f of subdivision (17), substituted "G.S. 131-176 (17)" for "G.S. 131-176 (15)" in the first sentence of paragraph l of subdivision (17) and added paragraph m of subdivision (17).

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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 Title XV of the Public Health Service Act.

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; 1981, c. 651, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "Title XV of the Public Health Service Act" for "P.L. 93-641" at the end of the first paragraph. Session Laws 1981, c.

651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply to the reviews of any certificate of need applications completed before October 1, 1981."

§ 131-178. Activities requiring certificates of need.

(a) No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department.

(b) No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase. In determining whether an acquisition would have been a new institutional health service the fair market value of the asset shall be deemed to be the purchase price.

(c) No person shall incur an obligation for a capital expenditure which is a new institutional health service without first obtaining a certificate of need from the Department. An obligation for a capital expenditure is incurred by or on behalf of a health care facility when:

- (1) An enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;
- (2) The governing body of a health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(3) In the case of donated property, the date on which the gift is completed.

(d) Where the estimated cost of a proposed capital expenditure is certified by a licensed architect or engineer to be equal to or less than the expenditure minimum for capital expenditure, such expenditure shall be deemed not to exceed the expenditure minimum for capital expenditures regardless of the actual amount expended, provided that the following conditions are met:

- (1) The certified estimated cost is prepared in writing 60 days or more before the obligation for the capital expenditure is incurred. 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 the expenditure exceeds the expenditure minimum for capital expenditures. The notice shall include a copy of the certified cost estimate.

(e) The Department may grant certificates of need which permit capital expenditures only for predevelopment activities. Predevelopment activities include the preparation of architectural designs, plans, working drawings, or specifications, the preparation of studies and surveys, and the acquisition of a potential site. (1977, 2nd Sess., c. 1182, s. 2; 1979, c. 876, s. 2; 1981, c. 651, s. 3.)

Editor's Note. — Session Laws 1981, c. 1127, s. 31, provides:

"(a) Findings of Fact. — The General Assembly of North Carolina makes the following findings:

"(1) That additional time is needed to plan and develop community alternatives to institutional care;

"(2) That time is needed to assess the impact of recent federal statutory changes contained in Omnibus Budget Reconciliation Act of 1981 on long-term care services in North Carolina;

"(b) No certificate of need shall be granted after January 1, 1982, under Article 18 of Chapter 131 of the General Statutes (The North Carolina Health Planning and Resource Development Act of 1978, as amended) for any additional bed capacity or new bed capacity for any skilled nursing facility, proposed skilled nursing facility, intermediate care facility, or proposed intermediate care facility, (as defined in G.S. 131-176), until all skilled nursing facility bed capacity and all intermediate care facility bed capacity authorized by any certificate of need or authorized under Section 1122 of the Social Security Act (42 U.S.C.S. 1320a-1.) has been constructed, and until the total of all such beds constructed subsequent to the effective date of this section are at seventy-five percent (75%) occupancy.

"(c) Notwithstanding any provision of Article 18 of Chapter 131 of the General Stat-

utes, no certificate of need for bed capacity for a skilled nursing facility or intermediate care facility, which beds were not constructed on or before the effective date of this section, may be transferred or sold (other than by devise or by operation of law upon death) until the conditions of subsection (b) of this section have been satisfied.

"(d) The Department of Human Resources may issue regulations to implement this section.

"(e) This section shall not apply to certificates of need for intermediate care facilities for the mentally retarded.

"(f) This section does not apply to conversion of home for aged beds to intermediate care facility or skilled nursing facility beds in a continuing care for the elderly and infirm facility as defined in G.S. 131A-3 as amended by Chapter 867, Session Laws of 1981, if the conversion is in pursuance to the policy in the State Medical Facilities Plan."

Effect of Amendments.

The 1981 amendment rewrote this section. Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply to the reviews of any certificate of need applications completed before October 1, 1981."

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 131-178.1. Research activities.

(a) Notwithstanding any other provisions of this Article, a health care facility may acquire major medical equipment to be used solely for research, offer institutional health services to be used solely for research, or incur the obligation of a capital expenditure solely for research, without a certificate of need, if the Department grants an exemption. The Department shall grant an exemption if the health care facility files a notice of intent with the Department in accordance with rules promulgated by the Department and if the Department finds that the acquisition, offering or obligation will not:

- (1) Affect the charges of the health care facility for the provision of medical or other patient care services other than services which are included in the research;
- (2) Substantially change the bed capacity of the facility; or
- (3) Substantially change the medical or other patient care services of the facility.

(b) After a health care facility has received an exemption pursuant to subsection (a) of this section, it shall not use the major medical equipment, offer the institutional health services, or use the equipment or facility acquired through the capital expenditure, in a manner which affects the charges of the facility for the provision of medical or other patient care services, other than the services which are included in the research, without first obtaining a certificate of need from the Department.

(c) Any of the activities described in subsection (a) of this section shall be deemed to be solely for research even if they include patient care provided on an occasional and irregular basis and not as a part of the research program. (1981, c. 651, s. 4.)

Editor's Note. — Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply

to the reviews of any certificate of need applications completed before October 1, 1981."

§ 131-178.2. Health maintenance organization.

(a) Subject to the provisions of subsection (b) of this section, no inpatient health care facility controlled, directly or indirectly by a health maintenance organization, hereinafter referred to as HMOs, or combination of HMOs shall offer or develop new institutional health services without first obtaining a certificate of need from the Department. Further, subject to the provisions of subsection (b) of this section, no health care facility of an HMO shall offer or develop any of the new institutional health services specified in G.S. 131-176(15) [G.S. 131-176(17)] g, h, and i without first obtaining a certificate of need from the Department. This section shall not be construed as requiring that a certificate of need be obtained before an HMO is established.

(b) The requirements of subsection (a) of this section shall not apply to any person who receives an exemption under this subsection. In order to receive an exemption an application must be submitted to the Department and the appropriate health systems agency or agencies. The application shall be on forms prescribed by the Department and contain the information required by the Department. The application shall be submitted at a time and in a manner prescribed by the rules and regulations of the Department. The Department shall grant an exemption if it finds that the applicant is qualified or will be qualified on the date the activity is undertaken. Any of the following are qualified applicants:

- (1) An HMO or combination of HMOs if (i) the HMO or combination of HMOs has an enrollment of at least 50,000 individuals in its service

area, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled in the HMO or HMOs in combination; or

(2) A health care facility, or portion thereof, if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iv) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled with the HMO or HMOs in combinations; or

(3) A health care facility, or portion thereof, if (i) the facility is or will be leased by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area and on the date the application for exemption is submitted at least 15 years remain on the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled with the HMO or HMOs in combination.

(c) If a fee-for-service component of an HMO or combination of HMOs qualifies for an exemption under subsection (b) of this section then it must be granted an exemption.

(d) In reviewing certificate of need applications submitted pursuant to this section, the Department shall not deny the application solely because the proposal is not addressed in the applicable health systems plan, annual implementation plan or State health plan.

(e) Notwithstanding the review criteria of G.S. 131-181(a), if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the Department shall grant the certificate if it finds, in accordance with G.S. 131-181(a)(10), that (i) granting the certificate is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and (ii) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it. (1981, c. 651, s. 4.)

Editor's Note. — Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply to the reviews of any certificate of need applications completed before October 1, 1981."

The reference in subsection (a) of this section

to § 131-176(15) is erroneous. "New institutional health services" is defined in § 131-176(17). The correct reference has been inserted in brackets in the section as set out above.

§ 131-179. Nature of certificates of need.

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 transferred or assigned. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 5.)

Effect of Amendments. — The 1981 amendment rewrote this section. Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall

not apply to the reviews of any certificate of need applications completed before October 1, 1981."

§ 131-180. Application.

(a) The Department in its rules and regulations shall establish schedules for submission and review of completed applications. The schedules, which shall be consistent with federal law and regulations, shall provide that applications for similar proposals in the same health service area will be reviewed together.

(b) An application for a certificate of need shall be made on forms provided by the Department. The application forms, which may vary according to the type of proposal, shall require such information as the Department, by its rules and regulations, deems necessary to conduct the review. An applicant shall be required to furnish only that information necessary to determine whether the proposed new institutional health service is consistent with the review criteria implemented under G.S. 131-181 and with duly adopted standards, plans, and criteria. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 6.)

Effect of Amendments. — The 1981 amendment rewrote this section. Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall

not apply to the reviews of any certificate of need applications completed before October 1, 1981."

§ 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, if any, 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, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups, and the elderly, are likely to have access to those services.
- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met, adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.
- (4) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated or eliminated.
- (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 by the person proposing the service.
- (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 need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan.
- (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 HMOs. These needs and circumstances shall be limited to:
 - a. The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and
 - b. The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the Department shall consider only whether the services from these providers:
 1. Would be available under a contract of at least 5 years' duration;
 2. Would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
 3. Would cost no more than if the services were provided by the HMO; and
 4. Would be available in a manner which is administratively feasible to the HMO.
- (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 and on the costs and charges to the public of providing health services by other persons.
- (13) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups, such as low income persons, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the applicable health systems plan, annual implementation plan, and State health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the Department shall consider:
 - a. The extent to which medically underserved populations currently use the applicant's proposed services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically

underserved populations are expected to use the proposed services if approved;

- b. The performance of the applicant in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;
 - c. The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and
 - d. The extent to which the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.
- (14) The effect of the means proposed for delivery of the health services on the clinical needs of health professional training programs in the area in which the services are to be provided.
 - (15) If the proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.
 - (16) The special circumstances of health care facilities with respect to the need for conserving energy.
 - (17) In accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k-2(b), the factors which influence the effect of competition on the supply of the health services being reviewed.
 - (18) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k-2(b), and serve to promote quality assurance and cost effectiveness.
 - (19) In the case of proposed health services or facilities, the efficiency and appropriateness of the use of existing, similar services and facilities.
 - (20) In the case of existing services or facilities, the quality of care provided in the past.
 - (21) When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the bases of the need for and availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The Department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.
- (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; 1981, c. 651, s. 7.)

Effect of Amendments. — The 1981 amendment, in subsection (a), inserted “, if any,” in subdivision (2), added the language beginning “, and the extent to which all residents of the area, and in particular low income persons” at the end of subdivision (3), added subdivision (3a), substituted “the services to be offered, expanded, reduced, relocated or eliminated” for

“such services” at the end of subdivision (4), added “by the person proposing the service” at the end of subdivision (5), substituted “the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan” for “the availability of alternative uses of such resources for the provision of other

health services" at the end of subdivision (7), rewrote subdivision (10), added "and on the costs and charges to the public of providing health services by other persons" at the end of subdivision (12), rewrote subdivision (13), and added subdivisions (14) through (21). Session

Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply to the reviews of any certificate of need applications completed before October 1, 1981."

§ 131-181.1. Required approvals.

(a) Except as provided in subsection (b), the Department shall issue a certificate of need for a proposed capital expenditure if:

- (1) The capital expenditure is required (i) to eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations, or (ii) to comply with State licensure standards, or (iii) to comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that act; and
- (2) The Department determines that (i) the facility or services for which the capital expenditure is proposed is needed, and (ii) the obligation of the capital expenditure is consistent with the State Health Plan. Even though the proposal is inconsistent with the State Health Plan, the Department may issue a certificate of need if emergency circumstances pose an imminent threat to public health.

(b) Those portions of a proposed project which are not to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards are subject to review under the criteria developed under G.S. 131-181. (1981, c. 651, s. 8.)

Editor's Note. — Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply

to the reviews of any certificate of need applications completed before October 1, 1981."

§ 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 or agencies shall have 60 days to review each application as to consistency with duly adopted plans, standards, and criteria. Following the review the health systems agency shall submit to the Department its comments and recommendations. 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.

(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; 1981, c. 651, ss. 9, 10.)

Effect of Amendments. — The 1981 amendment substituted the present first two sentences of subdivision (a)(1) for a former sentence, which read: "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."

In subsection (b), the amendment deleted the former second sentence, which read: "If the Department fails to act within such period, the failure to act shall constitute denial of the application." Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply to the reviews of any certificate of need applications completed before October 1, 1981."

§ 131-185. Administrative and judicial review.

(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption, any affected person shall be entitled to a contested case hearing under Article 3 of Chapter 150A of the General Statutes, if the Department receives a request therefor within 30 days after its decision.

(b) Any affected person who was a party in a contested case hearing shall be entitled to judicial review pursuant to Article 4 of Chapter 150A of the General Statutes of the final agency decision.

(c) The term "affected persons" includes the applicant; the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within that geographic area; health care facilities and health maintenance organizations (HMOs) located in the health service area in which the project is proposed to be located, which provide services similar to the services of the facility under review; health care facilities and HMOs which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; third party payers who reimburse health care facilities for services in the health service area in which the project is proposed to be located; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 11.)

Effect of Amendments. — The 1981 amendment rewrote this section. Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall

not apply to the reviews of any certificate of need applications completed before October 1, 1981."

§ 131-186. Withdrawal of a certificate of need.

(a) The Department shall specify in each certificate of need the time the holder has to make the service or equipment available or to complete the project and the timetable to be followed. The timetable shall be the one proposed by the holder of the certificate of need unless at the time the certificate of need is issued the Department determines by a preponderance of the evidence that the timetable proposed by the holder is unreasonable and that

a different timetable should be followed by the holder. The holder of the certificate shall submit such periodic reports on his progress in meeting the timetable as may be required by the Department. If, after reviewing the progress, the Department determines that the holder of the certificate is not meeting the timetable and not making a good faith effort to meet it, the Department may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate.

(b) The Department may withdraw any certificate of need which was issued subject to a condition or conditions, if the holder of the certificate fails to satisfy such condition or conditions.

(c) The Department may withdraw any certificate of need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility. Transfers resulting from personal illness or other good cause, as determined by the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. Transfers resulting from death shall not result in withdrawal. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 12.)

Effect of Amendments. — The 1981 amendment rewrote this section. Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall

not apply to the reviews of any certificate of need applications completed before October 1, 1981."

§ 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) Repealed by Session Laws 1981, c. 651, s. 13.

(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; 1981, c. 651, s. 13.)

Effect of Amendments.— The 1981 amendment deleted subsection (b), which read: "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." Session Laws 1981, c. 651, s. 14, declares an effective date of October 1, 1981, but provides that the act "shall not apply to the reviews of any certificate of need applications completed before October 1, 1981."

Chapter 131A.

Health Care Facilities Finance Act.

Sec.

131A-3. Definitions.

§ 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; nursing homes, including skilled nursing facilities and intermediate care facilities; facilities for continuing care of the elderly and infirm; 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 facilities 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;
 - (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.
 - (10) "Continuing care" means the furnishing, pursuant to a continuing care agreement, of shelter, food, and nursing care to an individual not related by consanguinity or affinity to the provider furnishing such care. Other personal services provided shall be designated in the continuing care agreement. Continuing care shall include only life care, care for life, or care for a term of years;
 - (11) "Life care" or "care for life" means a life lease, life membership, life estate, or similar agreement between an individual and a provider by which the individual pays a fee for the right to occupy a space in the continuing care facility and to receive continuing care for life; and
 - (12) "Care for a term of years" means an agreement between an individual and a provider whereby the individual pays a fee for the right to occupy space in a continuing care facility, and to receive continuing care, for at least one year, but for less than the life of the member. (1975, c. 766, s. 1; 1979, c. 54, s. 1; 1981, c. 64; c. 867, ss. 1, 2.)

Effect of Amendments. —

The first 1981 amendment inserted "nursing homes, including skilled nursing facilities and intermediate care facilities;" near the beginning of subdivision (4).

The second 1981 amendment incorporated the

change made by the first, and also inserted "facilities for continuing care of the elderly and infirm;" in subdivision (4), deleted "and" from the end of subdivision (8) and added subdivisions (10), (11), and (12).

Session Laws 1981, c. 867, ss. 3-5, provide:

Chapter 131B.

Licensing of Ambulatory Surgical Facilities.

Sec.

131B-7. Inspections.

Cross References. — As to review and evaluation of the programs and functions authorized under this Chapter, see § 143-34.26.

Repeal of Chapter. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Chapter effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, 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.

Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Human Resources who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients, residents or clients of the facility being inspected unless that patient, resident or client objects in writing to such review of his records. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the patient, resident or client has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient, resident, client or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section the patient,

resident or client must be advised in writing that he has the right to object in writing to such release of information or review of his records and that by an objection in writing he may prohibit the inspection or release of his records. (1977, 2nd Sess., c. 1214, s. 1; 1981, c. 586, s. 5.)

Effect of Amendments. — The 1981 amendment added the second paragraph.

Chapter 131C.

Charitable Solicitation Licensure Act.

Sec.		Sec.	
131C-1.	Short title.	131C-10.	Bond.
131C-2.	Purpose.	131C-11.	Denial and revocation of license.
131C-3.	Definitions.	131C-12.	Rule-making authority.
131C-4.	Licensure required for charitable solicitation.	131C-13.	Fiscal records.
131C-5.	Exemptions.	131C-14.	Written contracts; accounting.
131C-6.	Licensure required for professional fund-raising counsel and professional solicitor.	131C-15.	Reciprocal agreements.
131C-7.	Contents of application for charitable solicitation licensure.	131C-16.	Disclosure.
131C-8.	Contents of application for professional fund-raising counsel or professional solicitor.	131C-17.	Prohibited acts.
131C-9.	Fees.	131C-18.	Duty of Secretary of Human Resources to investigate.
		131C-19.	Power to compel examination.
		131C-20.	Person examined exempt from prosecution.
		131C-21.	Injunction.
		131C-22.	Misdemeanor.

§ 131C-1. Short title.

This Chapter shall be known and may be cited as the "Charitable Solicitation Licensure Act." (1981, c. 886, s. 1.)

Editor's Note. — This Chapter is Part 1A of Article 3 of Chapter 108, as recodified by Session Laws 1981, c. 275, s. 2, effective October 1, 1981, and rewritten by Session Laws 1981, c. 886, s. 1, effective January 1, 1982.

Session Laws 1981, c. 886, s. 2, contains a severability clause.

§ 131C-2. Purpose.

It is the purpose of this Chapter to protect the general public and public charity in the State of North Carolina and to provide for the establishment and enforcement of basic standards for the soliciting and use of charitable funds in North Carolina. (1981, c. 886, s. 1.)

§ 131C-3. Definitions.

Unless a different meaning is required by the context, the following terms as used in this Chapter have the meanings hereinafter respectively ascribed to them:

- (1) "Charitable" means for a benevolent purpose, such as environmental, advocacy, health, educational, social welfare, art and humanities or civic purpose.
- (2) "Charitable sales promotion" means an advertising campaign sponsored by a for-profit entity which offers for sale a tangible item or provides a service upon the representation that all or a portion of the purchase price will be donated to a person established for a charitable purpose.
- (3) "Commission" means the Social Services Commission.
- (4) "Contribution" means any promise, gift, bequest, devise or other grant for consideration or otherwise, of any money or property of any kind or value, including the promise to pay, which is wholly or partly induced by a solicitation. The term does not include the fair market value of any merchandise or rights given in return for the

contribution. The term does not include the portion of fees, dues and assessments for services or benefits received by the contributor.

- (5) "Department" means the Department of Human Resources.
- (6) "Fund-raising expenses" means the expenses of all activities that constitute a part of soliciting charitable contributions.
- (7) "Person" means individual, organization, trust, foundation association, partnership, corporation, society, or any other group or combination acting as a unit.
- (8) "Professional fund-raising counsel" means any person who for a fee under a written agreement plans, conducts, manages, carries on or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions, but who actually solicits no contributions as a part of such services. Such counsel does not include any person who only conducts a study to determine the feasibility of undertaking the solicitation of contributions. A salaried employee of the person for whom the contributions are solicited or of its tax exempt parent organization is not included within the term.
- (9) "Professional solicitor" means any person who, for a financial or other consideration, solicits or employs another to solicit contributions. A salaried employee of the person for whom the contributions are solicited or of its tax exempt parent organization and the person for whom the contributions are solicited are not included within the term. An attorney, investment counselor or banker, who advises any person to make a contribution to a person established for a charitable purpose, is not, as the result of such advice, a professional fund-raising counsel or a professional solicitor.
- (10) "Secretary" means the Secretary of the Department of Human Resources.
- (11) "Solicit" and "Solicitation" means the request or appeal, directly or indirectly, for any charitable contribution, including without limitation, the following methods of requesting such contribution:
 - a. Any oral or written request;
 - b. Any announcement to the press, over the radio or television or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;
 - c. The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication, including any advertisement or listing in a telephone directory, which directly or by implication seeks to obtain public support;
 - d. The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket, or any service or tangible item in connection with which any appeal is made for any charitable purpose; or where the name of any person established for a charitable purpose is used or referred to in any such appeal as an inducement or reason for making any such sale; or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose. Solicitation occurs when the request is made and at the place the request is received, whether or not the person making the same actually receives any contribution.
- (12) "Total support and revenue" means the total of all income received from all sources, including governmental grants. (1981, c. 886, s. 1.)

§ 131C-4. Licensure required for charitable solicitation.

(a) Any person who solicits charitable contributions shall apply for and obtain an annual license from the Department of Human Resources. A person who is authorized to solicit on behalf of a licensed or exempt person is not required to obtain a license under this section.

(b) A person may solicit charitable contributions after filing the application until the Department notifies him that the application has been denied and he waives or exhausts his administrative remedies under Article 3 of Chapter 150A.

(c) A person who has been denied a license and has waived or exhausted his administrative remedies under Article 3 of Chapter 150A shall not solicit charitable contributions until another application has been filed with the Department and a license issued by the Department. (1981, c. 886, s. 1.)

§ 131C-5. Exemptions.

(a) Any person who solicits charitable contributions for a religious purpose or on behalf of a person established for a religious purpose shall not be required to apply for a license.

(b) Solicitation of charitable contributions by the federal, State or local government, or any agency thereof, shall not be subject to this Article [Chapter]. For purposes of this subsection any volunteer fire department or rescue squad which receives any funds from federal, State, or local government shall be considered an agency thereof.

(c) Any person who receives less than ten thousand dollars (\$10,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser or professional solicitor shall not be required to apply for a license.

(d) Any educational institution, the curriculum of which in whole or in part, is registered, approved or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body; any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes; and any foundation or department having an established identity with any of the aforementioned educational institutions shall not be required to apply for a license.

(e) Any person established solely to operate a hospital licensed pursuant to Article 13A of Chapter 131 of the General Statutes shall not be required to apply for a license; provided, however, that the governing board of the hospital authorizes the solicitation and receives an accounting of the funds collected and expended.

(f) Any noncommercial radio or television station shall not be required to apply for a license. (1981, c. 886, s. 1.)

§ 131C-6. Licensure required for professional fund-raising counsel and professional solicitor.

Any person who acts as a professional fund-raising counsel or professional solicitor shall apply for and obtain an annual license from the Department. A person who is authorized to act on behalf of a licensed professional fund-raising counsel or a licensed professional solicitor is not required to obtain a license under this section. (1981, c. 886, s. 1.)

§ 131C-7. Contents of application for charitable solicitation licensure.

(a) An application for licensure shall be in writing, verified under oath or affirmation and shall contain:

- (1) The name of the person.
- (2) The address of the person.
- (3) The names and addresses of any chapters, branches or affiliates and other persons which will share in the charitable contributions received from persons in this State.
- (4) The place and date the person was legally established, if applicable, and a reference to any determination of its tax-exempt status under the Internal Revenue Code. In the initial application, true copies shall be submitted of any articles of incorporation or constitution, any bylaws, any tax-exempt status letter from the Internal Revenue Service including any Letter of Determination Status and any Agreements of Affiliation. Subsequent applications shall contain only any change or revocation of these documents.
- (5) The names, addresses and occupations of the officers, directors, trustees, persons who are directly in charge of the fund-raising activities and persons who have custody of the financial records or custody of the contributions and a statement whether any such person has been convicted of a felony.
- (6) A copy of a financial statement in a consolidated report audited by an independent public accountant for the person's immediately preceding fiscal year or, if none, for the present fiscal year or part thereof; provided that if total support and revenue exceeds two hundred fifty thousand dollars (\$250,000) for the fiscal year or part thereof, the report shall be audited by a certified public accountant. Information as to the total support and revenue and all of the fund-raising activities including the balance sheet, kind and amounts of funds raised, costs and expenses incidental thereto, allocation or disbursement of funds raised, changes in fund balances, notes to the audit and the opinion as to the fairness of the presentation by the accountant shall be included. This report shall conform to the accounting and reporting procedures established by the Commission. The Commission shall adopt rules for simplified reporting by persons whose total support and revenue is one hundred thousand dollars (\$100,000) or less.
- (7) A statement indicating whether the person is authorized by any other governmental authority to solicit contributions and whether it, or any officer, professional fund-raising counsel or professional solicitor thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction.
- (8) A statement indicating whether the person solicits contributions from the public directly or have such done on its behalf by others.
- (9) The location of the person's financial records.
- (10) Method by which solicitation is made, including a statement as to whether such solicitation is conducted by voluntary unpaid solicitors, by professional solicitors, or both; and a narrative description of the promotional plan together with copies of all advertising material which has been prepared for public distribution by any means of communication and the location of all telephone solicitation facilities.
- (11) The names and addresses of any professional fund-raising counsel and professional solicitors who are acting or who have agreed to act on behalf of the organization together with a statement setting forth

the terms of the arrangements for salaries, bonuses, commissions, or other remuneration with the professional fund-raising counsel and professional solicitors.

- (12) The period of time during which the solicitations are made and, if less than statewide, the area, or areas, in which such solicitation generally takes place.
 - (13) The purposes for which contributions to be solicited are used, the total amount of funds proposed to be raised thereby, and the use or disposition made of the charitable contributions received.
 - (14) The name or names under which the person solicits contributions.
 - (15) A sample copy of the authorization issued to individuals soliciting by means of personal contact in its behalf.
 - (16) The name and address of an agent authorized to accept service of process in this State.
 - (17) A statement indicating whether an agreement exists which permits another to use its name in a charitable sales promotion and a copy of any accounting of the charitable sales promotion.
 - (18) Such other information as may be reasonably required by the Commission for the public interest or for the protection of contributors.
- (b) The Department shall be notified in writing of any change in the information contained in the application within 30 days after the change occurs. (1981, c. 886, s. 1.)

§ 131C-8. Contents of application for professional fund-raising counsel or professional solicitor.

(a) An application for licensure shall be in writing, verified under oath or affirmation and shall contain such information as specified in G.S. 131C-7 as the Commission shall require. In addition, the application shall contain:

- (1) The name and address of all officers, employees and agents;
 - (2) The name and address of all persons who own a ten percent (10%) or more interest in the applicant; and
 - (3) A description of any other business conducted by the applicant or any person who owns a ten percent (10%) or more interest in the applicant.
- (b) The Department shall be notified in writing of any change in the information contained in the application within seven days after the change occurs. (1981, c. 886, s. 1.)

§ 131C-9. Fees.

(a) An application for licensure under G.S. 131C-4 or 131C-6 shall be accompanied by a fee not to exceed one hundred dollars (\$100.00) in accordance with a fee schedule established by the Commission.

(b) The fees collected shall be used, in addition to funds appropriated by the General Assembly, for the administration of this Chapter. (1981, c. 886, s. 1.)

§ 131C-10. Bond.

An applicant under G.S. 131C-6 shall, at the time of making application, file with and have approved by the Department a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars (\$10,000) with one or more sureties satisfactory to the Department, whose liability in the aggregate as such sureties will at least equal the said sum; and the applicant shall maintain said bond in effect so long as the license is in effect. The bond shall run to the State for the use of said bond for any penalties and to any person who may have a cause of action against the obligor of the bond for any losses resulting from the obligor's conduct of any and all activities subject to this

Chapter or arising out of a violation of this Chapter or any rule of the Commission. (1981, c. 886, s. 1.)

§ 131C-11. Denial and revocation of license.

(a) The Department shall deny a license applied for under G.S. 131C-4 or 131C-6 or revoke a license after issuance for the following reasons:

- (1) The application is incomplete.
- (2) The application fee has not been paid.
- (3) The application contains one or more false statements.
- (4) The charitable contributions have or are not being applied for the purpose or purposes stated in the application.
- (5) The applicant or licensee has failed to comply with any provisions or [of] this Chapter or any rule adopted pursuant to the Chapter.

(b) The Department shall notify the applicant or licensee of its intent to deny or revoke a license. The notification shall contain the reasons for the action and shall inform him of his right to correct the matter or to request an administrative hearing within 10 days of the receipt of the notification. The denial or revocation shall become effective 10 days after receipt of the notification unless the matter is corrected or a request for an administrative hearing is received by the Department before the expiration of the 10 days. If a hearing is requested and the denial or revocation is upheld, the denial or revocation shall become effective upon the service of the final administrative decision on the applicant of [or] licensee. (1981, c. 886, s. 1.)

§ 131C-12. Rule-making authority.

The Social Services Commission shall have the authority to adopt rules necessary for the implementation of this Chapter and to prevent false and deceptive statements and conduct in the solicitation of charitable contributions. (1981, c. 886, s. 1.)

§ 131C-13. Fiscal records.

Any person subject to licensure under this Chapter shall maintain accurate fiscal records in accordance with rules adopted by the Commission. (1981, c. 886, s. 1.)

§ 131C-14. Written contracts; accounting.

(a) Any contract between a professional fund-raising counsel or professional solicitor and a person established for a charitable purpose shall be in writing and shall be filed with the Department within 10 days after the contract is entered into.

(b) A professional solicitor shall file with the Department, within 20 days from the conclusion of any solicitation, an accounting of all funds received, pledged and disbursed. The accounting shall be signed and verified under oath or affirmation by the professional solicitor and an authorized representative of the person established for a charitable purpose. (1981, c. 886, s. 1.)

§ 131C-15. Reciprocal agreements.

The Department may enter into reciprocal agreements with other states and the federal government in order to fulfill its duties under this Chapter. (1981, c. 886, s. 1.)

§ 131C-16. Disclosure.

Any person subject to licensure under this Chapter or who is authorized to solicit on behalf of a person licensed under this Chapter shall disclose by printed notice within 30 days after licensure within each county in the State in which a solicitation is conducted, his percentage of fund raising expenses and purpose of the organization. This disclosure shall be published in the newspaper having the largest audited circulation in each county for three consecutive days each year. And it shall be in a form prescribed by the Social Services Commission. (1981, c. 886, s. 1.)

§ 131C-17. Prohibited acts.

No person who solicits charitable contributions shall:

- (1) Use the fact of licensure as an endorsement by the State;
- (2) Use the name "police," "law enforcement," "rescue squad," "firemen," or "firefighter" unless a bona fide police, law-enforcement, rescue squad or fire department authorized its use in writing;
- (3) Misrepresent or mislead anyone to believe that the contribution will be used for a charitable purpose if he has reason to believe such is not the fact;
- (4) Misrepresent or mislead anyone to believe that another person sponsors or endorses the solicitation unless such person has consented in writing to the use of his name for such purpose;
- (5) Misrepresent or mislead anyone to believe that the contribution is solicited on the behalf of anyone other than the person for whose benefit the contribution is solicited; or
- (2) Spend the contributions solicited for purposes other than those stated in the application under G.S. 131C-4 or if not subject to licensure, for purposes other than those stated at the time of the solicitation. (1981, c. 886, s. 1.)

§ 131C-18. Duty of Secretary of Human Resources to investigate.

The Secretary of Human Resources shall have the power, and it shall be his duty, to investigate, from time to time, the activities of all persons soliciting charitable contributions in this State, which are or may in his opinion be subject to this Chapter, or which have or may have violated G.S. 131C-17. Such investigation shall be with a view of ascertaining whether this Chapter is being or has been violated by any such person, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to grant or deny an application for licensure, to revoke a license, to seek an injunction against any person, or to take any other action pursuant to this Chapter. (1981, c. 886, s. 1.)

§ 131C-19. Power to compel examination.

In performing the duty required in G.S. 131C-18, the Secretary shall have the power, at all times, to require the officers, agents or employees of any person soliciting charitable contributions in this State and all other persons having knowledge with respect to the matters and activities of such persons, to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such persons, or which are in any way connected with the business thereof; and the Secretary is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have the right to apply to any justice or

judge of the appellate or superior court divisions, after five days notice of such application, for an order on any such person he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such judge. (1981, c. 886, s. 1.)

§ 131C-20. Person examined exempt from prosecution.

No individual examined, as provided in G.S. 131C-19, shall be subject to indictment, criminal prosecution, criminal punishment or criminal penalty by reason of or on account of anything disclosed by him upon examination, and full immunity from criminal prosecution and criminal punishment by reason of or on account of anything so disclosed is hereby extended to all individuals so examined. The immunity herein granted shall not apply to civil actions. (1981, c. 886, s. 1.)

§ 131C-21. Injunction.

If any person shall violate or threaten to violate any provision of this Chapter, the Secretary of Human Resources may institute an action in the Superior Court of Wake County for injunctive relief against such violation or threatened violation. (1981, c. 886, s. 1.)

§ 131C-22. Misdemeanor.

Any person who willfully violates any provision of this Chapter shall be guilty of a misdemeanor. (1981, c. 886, s. 1.)

Chapter 131D.

Inspection and Licensing of Facilities.

Article 1.

Licensing of Facilities.

Sec.

- 131D-1. Licensing of maternity homes.
- 131D-2. Licensing of domiciliary homes for the aged, disabled and infirm.
- 131D-3. Domiciliary care facilities; reporting requirements.
- 131D-4. Domiciliary care facilities; uniform chart of accounts.
- 131D-5. Licensing of child-caring institutions.
- 131D-6 to 131D-10. [Reserved.]

Article 2.

Local Confinement Facilities.

- 131D-11. Inspection.
- 131D-12. Approval of new facilities.
- 131D-13. Failure to provide information.
- 131D-14 to 131D-18. [Reserved.]

Article 3.

Domiciliary Home Residents' Bill of Rights.

Sec.

- 131D-19. Legislative intent.
- 131D-20. Definitions.
- 131D-21. Declaration of residents' rights.
- 131D-22. Incompetence.
- 131D-23. No waiver of rights.
- 131D-24. Notice to resident.
- 131D-25. Implementation.
- 131D-26. Enforcement and investigation.
- 131D-27. Confidentiality.
- 131D-28. Civil action.
- 131D-29. Revocation of license.
- 131D-30. Penalties; remedies.
- 131D-31. Domiciliary home community advisory committees.
- 131D-32. Functions of domiciliary home community advisory committees.
- 131D-33. Cooperation.

ARTICLE 1.

Licensing of Facilities.

§ 131D-1. Licensing of maternity homes.

(a) The Department of Human Resources shall inspect and license all maternity homes established in the State under such rules and regulations as the Social Services Commission may adopt.

(b) Facilities subject to the provisions of this section shall include:

- (1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and
- (2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2.)

Editor's Note. — This Article is Part 2 of Article 3 of Chapter 108, as recodified pursuant to Session Laws 1981, c. 275, s. 2, effective October 1, 1981. Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from

the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108.

Session Laws 1981, c. 275, s. 9, contains a severability clause.

§ 131D-2. Licensing of domiciliary homes for the aged, disabled and infirm.

(a) The following definitions will apply in the interpretation of this section:

- (1) "Abuse" means abuse as defined in G.S. 108A-152(a).
- (2) "Developmentally Disabled Adult" means a person who has attained the age of 18 years and who has a developmental disability as defined in G.S. 143B-178(1).
- (3) "Domiciliary Home" means any facility, by whatever name it is called, which provides residential care for aged or disabled persons whose principal need is a home with the sheltered or personal care their age or disability requires. Medical care at a domiciliary home is only occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 130-9(e). The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.
- (4) "Exploitation" means exploitation as defined in G.S. 108A-152(j).
- (5) "Family Care Home" means a domiciliary home having two to five residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct, exterior ground-level accesses to the upper story.
- (6) "Group Home for Developmentally Disabled Adults" means a domiciliary home which has two to nine developmentally disabled adult residents.
- (7) "Home for the Aged and Disabled" means a domiciliary home which has six or more residents.
- (8) "Neglect" means the failure to provide the services necessary to maintain a resident's physical or mental health.

(b) The Department of Human Resources shall inspect and license, under the rules and regulations adopted by the Social Services Commission all domiciliary homes for persons who are aged or mentally or physically disabled except those exempted in subsection (d) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary of Human Resources for failure to comply with any part of this Article or with the regulations promulgated in accordance with the provisions of this Article. Any individual or corporation that operates a facility subject to license under this section without a license is guilty of a misdemeanor. In addition, the Department may utilize the provision for summary suspension of license found in G.S. 150A-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation or any other condition which presents an immediate danger to the health and safety of any resident of the home. Notwithstanding the provisions of G.S. 8-53 or any other provisions of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Human Resources who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, care, medical condition, or history of persons who are or have been residents, clients, or employees of the facility being inspected unless that resident or client objects in writing to such review. The representatives of the department may also interview physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving care or treatment at or through the facility, to elicit confidential or privileged information, and the physician-patient privilege found in G.S. 8-53 or any other provision of law shall not be a bar to this

questioning; provided the resident or client has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the department and not disclosed without written authorization of the resident, client, employee or legal representative or unless disclosure is ordered by a court of competent jurisdiction. The department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1.

(c) Facilities which are exempt from the provisions of this section are as follows:

- (1) Those which care for one person only;
- (2) Those which care for two or more persons, all of whom are related or connected by blood or by marriage to the operator of the facility;
- (3) Those which make no charges for care, either directly or indirectly;
- (4) Those which care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration.

(d) This section does not apply to any institution which is established, maintained or operated by any unit of government, by any commercial inn or hotel, or to any facility licensed by the Medical Care Commission under the provisions of G.S. 130-9(e), entitled "Nursing Homes". If any nursing home licensed under G.S. 130-9(e) also functions as a domiciliary home, then the domiciliary home component must comply with regulations adopted by the Medical Care Commission.

(e) The Department of Human Resources shall provide the method of evaluation of residents in domiciliary homes in order to determine when any of those residents are in need of the professional medical and nursing care provided in licensed nursing homes.

(f) If any provisions of this act or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 729; 1981, c. 275, s. 2; c. 544, s. 1.)

Effect of Amendments. — Session Laws 1981, c. 544, s. 1, effective January 1, 1982, rewrote this section.

§ 131D-3. Domiciliary care facilities; reporting requirements.

The Department of Human Resources, Division of Social Services, by January 1, 1982, shall develop a cost and revenue reporting form for use by all domiciliary care facilities. This form shall be based on the uniform chart of accounts required in G.S. 131D-4. All facilities that receive funds under the

State-County Special Assistance for Adults Program shall report total costs and revenues to the Department of Human Resources by February 1, 1984, for the 1983 calendar year and annually thereafter. Facilities licensed for five beds or less and combination facilities providing either intermediate or skilled care in addition to domiciliary care shall not be required to comply with the reporting requirements in this section. All facilities shall be required to permit access to any requested financial records by representatives of the Department of Human Resources for audit purposes effective July 1, 1981.

The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

- (1) Seek a court order to enforce compliance;
- (2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150A, the Administrative Procedure Act. (1981, c. 859, s. 23.2.)

Editor's Note. — Session Laws 1981, c. 859, s. 98, makes this section effective July 1, 1981.

Session Laws 1981, c. 859, s. 97 contains a severability clause.

§ 131D-4. Domiciliary care facilities; uniform chart of accounts.

The Department of Human Resources, Division of Social Services, by January 1, 1982, shall develop a uniform chart of accounts for use by all domiciliary care facilities funded totally or in part through the State-County Special Assistance for Adults Program. The Division shall consult with representatives from the domiciliary care industry in developing the new accounting system. The Division shall require that domiciliary care facilities covered by this section to implement this chart of accounts by January 1, 1983. Facilities licensed for five beds or less, and combination facilities providing either intermediate or skilled care in addition to domiciliary care, shall not be required to comply with this section.

The Department may take either or both of the following actions to enforce compliance by a facility with this section or to punish noncompliance:

- (1) Seek a court order to enforce compliance;
- (2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150A, the Administrative Procedure Act. (1981, c. 859, s. 23.3.)

Editor's Note. — Session Laws 1981, c. 859, s. 98, makes this section effective July 1, 1981.

Session Laws 1981, c. 859, s. 97 contains a severability clause.

§ 131D-5. Licensing of child-caring institutions.

(a) The Department of Human Resources shall inspect and license child-caring institutions in the State under rules and regulations adopted by the Social Services Commission, except those child-caring institutions which are exempt under (c) herein.

(b) Licenses granted to child-caring institutions under this section shall be valid for one year after the date of issuance and may be revoked sooner if the Secretary of Human Resources finds that the public good or the welfare of the children within any institution is not being properly served.

(c) This section shall not apply to any child-caring institution chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars (\$60,000) or more and

which is owned or operated by a religious denomination or fraternal order and which was in operation prior to July 1, 1977. Neither shall this section apply to State institutions for the mentally handicapped or to State institutions for the detention of juveniles. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1977, c. 674, ss. 2-6; 1981, c. 275, s. 2.)

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

CASE NOTES

Quoted in *Vaughn v. North Carolina Dep't of Human Resources*, 296 N.C. 683, 252 S.E.2d 792 (1979).

§§ 131D-6 to 131D-10: Reserved for future codification purposes.

ARTICLE 2.

Local Confinement Facilities.

§ 131D-11. Inspection.

The Department of Human Resources shall, as authorized by G.S. 153-51, inspect regularly all local confinement facilities as defined by G.S. 153-50(4) to determine compliance with the minimum standards for local confinement facilities adopted by the Social Services Commission. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2.)

Cross References. — As to detention of juveniles in holdover facilities inspected pursuant to this part and § 153A-222 where no juvenile detention home is available, see § 7A-576.

Editor's Note. — This Article is Part 3 of Article 3 of Chapter 108, as recodified pursuant to Session Laws 1981, c. 275, s. 2, effective

October 1, 1981. Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

§ 131D-12. Approval of new facilities.

The Department of Human Resources shall, as authorized by G.S. 153-51, approve the plans for the construction or major modification of any local confinement facility. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2.)

§ 131D-13. Failure to provide information.

If the board of commissioners of any county, the chief of police of any municipality, or any officer or employee of any local confinement facility shall fail or refuse to furnish to the Department of Human Resources any information about any local confinement facility which is required by law to be furnished, or shall fail to allow the inspection of any such facility, such board or individual shall be guilty of a misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1891, c. 491, s. 2; Rev., s. 3566; C. S., s. 5013; 1957, c. 100, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2.)

§§ 131D-14 to 131D-18: Reserved for future codification purposes.

ARTICLE 3.***Domiciliary Home Residents' Bill of Rights.*****§ 131D-19. Legislative intent.**

It is the intent of the General Assembly to promote the interests and well-being of the residents in domiciliary homes to include family care homes, homes for the aged and disabled, and group homes for developmentally disabled adults licensed pursuant to G.S. 131D-2. It is the intent of the General Assembly that every resident'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 resident in the fullest possible exercise of these rights. (1981, c. 923, s. 1.)

Editor's Note. — Session Laws 1981, c. 923, s. 3, makes this Article effective October 1, 1981, except for §§ 131D-31 through 131D-33, which become effective January 1, 1982. Session Laws 1981, c. 275, s. 9, contains a severability clause.

§ 131D-20. Definitions.

As used in this Article, the following terms have the meanings specified:

- (1) "Abuse" has the same meaning as in G.S. 108A-100(a).
- (2) "Domiciliary home" means any facility, by whatever name it is called, which provides residential care for aged or disabled persons whose principal need is a home with the sheltered or personal care their age or disability requires. Medical care at a domiciliary home is only occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 130-9(e). The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.
- (3) "Exploitation" means exploitation as defined in G.S. 108A-152(j).
- (4) "Facility" means a domiciliary home licensed pursuant to G.S. 131D-2.
- (5) "Family Care Home" means a domiciliary home having two to five residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct, exterior ground-level accesses to the upper story.
- (6) "Group home for developmentally disabled adults" means a domiciliary home which has two to nine developmentally disabled adult residents.

- (7) "Home for the aged and disabled" means a domiciliary home which has six or more residents.
- (8) "Neglect" means the failure to provide the services necessary to maintain the physical or mental health of a resident.
- (9) "Resident" means an aged or disabled person who has been admitted to a facility. (1981, c. 923, s. 1.)

§ 131D-21. Declaration of residents' rights.

Each facility shall treat its residents in accordance with the provisions of this Article. Every resident shall have the following rights:

- (1) To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.
- (2) To receive care and services which are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations.
- (3) To receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services.
- (4) To be free of mental and physical abuse, neglect, and exploitation.
- (5) Except in emergencies, to be free from chemical and physical restraint unless authorized for a specified period of time by a physician according to clear and indicated medical need.
- (6) To have his or her personal and medical records kept confidential and not disclosed if he or she objects in writing unless required by State or federal law or regulation.
- (7) To receive a reasonable response to his or her requests from the facility administrator and staff.
- (8) To associate and communicate privately and without restriction with people and groups of his or her own choice on his or her own or their initiative at any reasonable hour.
- (9) To have access at any reasonable hour to a telephone where he or she may speak privately.
- (10) To send and receive mail promptly and unopened, unless the resident requests that someone open and read mail, and to have access at his or her expense to writing instruments, stationery, and postage.
- (11) To be encouraged to exercise his or her rights as a resident and citizen, and to be permitted to make complaints and suggestions without fear of coercion or retaliation.
- (12) To have and use his or her own possessions where reasonable and have an accessible, lockable space provided for security of personal valuables. This space shall be accessible only to the resident, the administrator, or supervisor-in-charge.
- (13) To manage his or her personal needs funds unless such authority has been delegated to another. If authority to manage personal needs funds has been delegated to the facility, the resident has the right to examine the account at any time.
- (14) To be notified when the facility is issued a provisional license by the North Carolina Department of Human Resources and the basis on which the provisional license was issued. The resident's responsible family member or guardian shall also be notified.
- (15) To have freedom to participate by choice in accessible community activities and in social, political, medical, and religious resources and to have freedom to refuse such participation.
- (16) To receive upon admission to the facility a copy of this section. (1981, c. 923, s. 1.)

§ 131D-22. Incompetence.

If the resident 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. (1981, c. 923, s. 1.)

§ 131D-23. No waiver of rights.

No facility may require a resident to waive the rights specified in G.S. 131D-21. (1981, c. 923, s. 1.)

§ 131D-24. Notice to resident.

(a) A copy of the declaration of the residents' rights shall be posted conspicuously in a public place in all facilities. A copy of the declaration of residents' rights shall be furnished to the resident upon admittance to the facility, to all residents currently residing in the facility, to a representative payee of the resident, or to any person designated in G.S. 131D-22, and if requested to the resident's responsible family member or guardian. Receipts for the declaration of rights signed by these persons shall be retained in the facility's files. The declaration of rights shall be included as part of the facility's admission policies and procedures.

(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 G.S. 131D-21. The address and telephone number of the county Social Services Department, and the appropriate person or office of the Department of Human Resources shall also be posted and distributed. (1981, c. 923, s. 1.)

§ 131D-25. Implementation.

Responsibility for implementing the provisions of this Article shall rest with the administrator of the facility. Each facility shall provide appropriate training to staff to implement the declaration of residents' rights included in G.S. 131D-21. (1981, c. 923, s. 1.)

§ 131D-26. Enforcement and investigation.

(a) The Department of Human Resources shall be responsible for the enforcement of the provisions of this Article. Specifically, the Department of Social Services in the county in which the facility is located, along with the Department of Human Resources, shall be responsible for enforcing the provisions of the declaration of the residents' rights. The director of the county Department of Social Services shall monitor the implementation of the declaration of the residents' rights and shall also investigate any complaints or grievances pertaining to violations of the declaration of rights.

(b) If upon investigation, it is found that any of the provisions of the declaration of rights have been violated, the director of the county Department of Social Services must inform the administrator of the specific violations, what must be done to correct them, and set a date by which the violations must be corrected. This information must be confirmed in writing to the administrator by the county director who shall specify the identified violation(s), what must be done to correct the violation(s) and dates by which they must be corrected. Such written communication must be made immediately following the investigation, and a copy of the letter shall be sent to the Department of Human Resources.

(c) Upon receiving requests for assistance in resolving complaints from the county Department of Social Services, the Department of Human Resources shall ensure compliance with the provisions of this Article.

(d) The county director of social services shall annually make a report to the Department of Human Resources about the number of substantiated violations of G.S. 131D-21, the nature of the violations, and the number of violations referred to the Department of Human Resources for resolution. (1981, c. 923, s. 1.)

§ 131D-27. Confidentiality.

The Department of Human Resources is authorized to inspect residents' records maintained at the facility when necessary to investigate any alleged violation of the declaration of the residents' rights. The Department of Human Resources shall maintain the confidentiality of all persons who register complaints with the Department of Human Resources and of all records inspected by the Department of Human Resources. (1981, c. 923, s. 1.)

§ 131D-28. Civil action.

Every resident 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 ad litem pursuant to law, may institute an action pursuant to this section on behalf of the resident or residents. Any agency or person above named may enforce the rights of the resident specified in G.S. 131D-21 which the resident himself is unable to enforce. (1981, c. 923, s. 1.)

§ 131D-29. Revocation of license.

The Department of Human Resources shall have the authority to revoke a license issued pursuant to G.S. 131D-2 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 or certified 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. (1981, c. 923, s. 1.)

§ 131D-30. Penalties; remedies.

(a) The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility:

- (1) Which fails to comply with either the entire section of residents' rights listed in G.S. 131D-21 or with any of these rights, the failure to comply with which endangers the health, safety or welfare of a resident, 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 resident 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 of Human Resources 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. (1981, c. 923, s. 1.)

§ 131D-31. Domiciliary home community advisory committees.

(a) Statement of Purpose. — It is the intent of the General Assembly that community advisory committees work to maintain the spirit of the Domiciliary Home Residents' Bill of Rights within the licensed domiciliary homes in this State. It is the further intent of the General Assembly that the committees promote community involvement and cooperation with domiciliary homes to ensure quality care for the elderly and disabled adults.

(b) Establishment and Appointment of Committees. — Counties are encouraged to establish a Domiciliary Home Community Advisory Committee in each county which has at least one licensed domiciliary home. The committee 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. Each committee shall be appointed by the board of county commissioners. The size of the committee, the makeup of its members, and the length of their terms will be left to the discretion of the county commissioners. It is desirable for county commissioners to have input from all interested parties, including the local domiciliary home operators regarding the appointment of the committees. Each county shall have the necessary flexibility in appointing committee members. Existing advocacy committees such as the Nursing Home Community Advisory Committees may be utilized for this purpose.

(c) Minimum Qualifications for Appointment. — 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 of a home served by a committee, or immediate family member of a resident in a home served by a committee may be a member of a committee. 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 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 county Department of Social Services, and the Department of Human Resources. (1981, c. 923, s. 1.)

Editor's Note. — Session Laws 1981, c. 923, s. 3, makes this section effective January 1, 1982.

§ 131D-32. Functions of domiciliary home community advisory committees.

(a) The committee shall serve as the nucleus for increased community involvement with domiciliary homes and their residents.

(b) The committee shall promote community education and awareness of the needs of aging and disabled persons who reside in domiciliary homes, and shall work towards keeping the public informed about aspects of long-term care and the operation of domiciliary homes in North Carolina.

(c) The committee shall develop and recruit volunteer resources to enhance the quality of life for domiciliary home residents.

(d) The committee or individual members of the committee shall have the right between 10:00 A.M. and 8:00 P.M. to enter the facility the committee serves in order to carry out the members' responsibilities. The committee shall have access to residents of the home, as well as access to the facility and its staff. Before entering any domiciliary home, the committee or members of the committee shall identify themselves to the person present at the facility who is in charge of the facility at that time.

(e) The committee shall establish linkages with the domiciliary home administrators and the county Department of Social Services for the purpose of maintaining the spirit of the domiciliary home residents' bill of rights. This would include identifying any alleged violations of the bill of rights, discussing them with the domiciliary home administrator if possible, and reporting such situations to the county Department of Social Services, which has responsibility for resolution.

(f) The committee shall prepare an annual report to the board of county commissioners with a copy of the Department of Human Resources containing an appraisal of the problems of domiciliary care facilities as well as issues affecting long-term care in general. (1981, c. 923, s. 1.)

Editor's Note. — Session Laws 1981, c. 923, s. 3, makes this section effective January 1, 1982.

§ 131D-33. Cooperation.

In order for a domiciliary home as defined by G.S. 131D-20(2) to be licensed under that subsection, the home shall cooperate with the community advisory committee, when such committee has been appointed by the county commissioners. (1981, c. 923, s. 1.)

Editor's Note. — Session Laws 1981, c. 923, s. 3, makes this section effective January 1, 1982.

Chapter 132.

Public Records.

§ 132-1. "Public records" defined.

Cross References. — As to records of education agencies, see § 115C-3. As to exception for student test scores, see § 115C-182. As to reports of positive tuberculosis tests, see § 130-82.2.

§ 132-6. Inspection and examination of records.

Local Modification. — New Hanover: 1981, c. 960.

§ 132-9. Access to records.

Local Modification. — New Hanover: 1981, c. 960.

Chapter 133.

Public Works.

Article 1.

General Provisions.

Sec.

133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

Article 2.

Relocation Assistance.

133-9. Replacement housing for homeowners.

133-10. Replacement housing for tenants and certain others.

133-10.1. Authorization for replacement housing.

133-18 to 133-22. [Reserved.]

Article 3.

Regulation of Contractors for Public Works.

133-23. Definition.

Sec.

133-24. Government contracts; violations of G.S. 75-1 and 75-2.

133-25. Conviction; punishment.

133-26. Individuals convicted may not serve on licensing boards.

133-27. Suspension from bidding.

133-28. Civil damages; liability; statute of limitations.

133-29. Reporting of violations of G.S. 75-1 or 75-2.

133-30. Noncollusion affidavits.

133-31. Perjury; punishment.

133-32. Gifts and favors regulated.

133-33. Cost estimates; bidders' lists.

ARTICLE 1.

General Provisions.

§ 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 one hundred thousand dollars (\$100,000) for the repair of public buildings where such repair does not include major structural change, or in excess of forty-five thousand dollars (\$45,000) for the construction of, or additions to, 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 89C 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.

(b) On all projects requiring the services of an architect or engineer, or both, the architect or engineer or both whose names and seals appear on plans or specifications, shall inspect the construction, or repairs or installations, and based upon said inspection shall issue a signed and sealed certificate of compliance to the awarding authority that the contractor has fulfilled all obligations of such plans, specifications, and contract. No certificate of compliance shall be issued until the architect and/or engineer is satisfied that the contractor has fulfilled all obligations of such plans, specifications, and contract.

(c) The following shall be excepted from the requirements of subsection (a) of this section:

- (1) Dwellings and outbuildings in connection therewith, such as barns and private garages.
- (2) Apartment buildings used exclusively as the residence of not more than two families.
- (3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.
- (4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.

(d) On repair projects involving the expenditures of public funds in an amount of one hundred thousand dollars (\$100,000), or less, or on construction or addition 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, except that the provisions of this subsection shall not apply on projects wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction.

(e) All plans and specifications for public buildings of any kind shall be identified by the name and address of the author thereof.

(f) Neither the designer nor the contractor involved shall receive his final payment until the required certificate of compliance shall have been received by the awarding authority.

(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; 1981, c. 687.)

Editor's Note. — Chapter 83, referred to in subsection (a) of this section, was rewritten by Session Laws 1979, c. 871, s. 1, and has been recodified as Chapter 83A.

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, in subsection (a), inserted "one hundred thousand dollars (\$100,000) for the repair of public buildings where such repair does not include major structural change, or in excess of," substituted "of, or additions to, public buildings" for "or repair of

public buildings," and substituted "Chapter 89C" for "Chapter 89"; in subsection (d), deleted "construction or" preceding "repair projects" near the beginning, inserted "in an amount of one hundred thousand dollars (\$100,000), or less, or on construction or addition projects involving the expenditures of public funds," and added the provisions beginning ", except that the provisions of this subsection shall not apply" at the end of the subsection; and made other minor changes.

ARTICLE 2.

Relocation Assistance.

§ 133-9. Replacement housing for homeowners.

(a) In addition to payments otherwise authorized by this Article and subject to the provisions of G.S. 133-10.1 the agency may make an additional payment not in excess of fifteen thousand dollars (\$15,000) to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

- (1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this section shall be made in accordance with standards established by the agency making the additional payment.
 - (2) The amount, if any, shall be the amount which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.
 - (3) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.
- (b) The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one-year period beginning on the date on which he receives from the agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.
- (c) The agency may, in cooperation with any federal agency upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage. (1971, c. 1107, s. 1; 1981, c. 101, s. 1.)

Effect of Amendments. — The 1981 amendment inserted "and subject to the provisions of G.S. 133-10.1" in the first sentence of subsection (a).

Session Laws 1981, c. 101, s. 5, provides: "This act shall apply to all 'displaced persons' as defined in Article 2 of Chapter 133, moving after May 1, 1980."

§ 133-10. Replacement housing for tenants and certain others.

In addition to amounts otherwise authorized by this Article and subject to the provisions of G.S. 133-10.1, the agency may make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under G.S. 133-9 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either:

- (1) The amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed four thousand dollars (\$4,000), or
- (2) The amount necessary to enable such person to make a down payment (including incidental expenses described in G.S. 133-9(a) (3), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed four thousand dollars (\$4,000), except that if such amount exceeds two thousand dollars (\$2,000), such person must equally match any such amount in excess of two thousand dollars (\$2,000), in making the down payment. (1971, c. 1107, s. 1; 1981, c. 101, s. 2.)

Effect of Amendments. — The 1981 amendment inserted "and subject to the provisions of G.S. 133-10.1" in the first sentence.

Session Laws 1981, c. 101, s. 5, provides:

"This act shall apply to all 'displaced persons' as defined in Article 2 of Chapter 133, moving after May 1, 1980."

§ 133-10.1. Authorization for replacement housing.

As a last resort, if a project cannot proceed to actual construction because of the lack of availability of comparable sale or rental housing, or because required federal-aid payments are in excess of those otherwise authorized by this Article, the Department of Transportation 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,
- (4) Exceed the limitation in G.S. 133-9(a) and 133-10. (1975, c. 515; 1981, c. 101, ss. 3, 4.)

Effect of Amendments. — The 1981 amendment added subdivision (4), and substituted the present introductory paragraph for the former paragraph, which read: "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 avail-

ability of comparable sale or rental housing, the Department of Transportation, upon a determination that such housing cannot otherwise be made available, may."

Session Laws 1981, c. 101, s. 5, provides: "This act shall apply to all 'displaced persons' as defined in Article 2 of Chapter 133, moving after May 1, 1980."

§§ 133-18 to 133-22: Reserved for future codification purposes.

ARTICLE 3.

Regulation of Contractors for Public Works.

§ 133-23. Definition.

(a) The term "governmental agency" shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term "person" shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term "subsidiary" is used as defined in G.S. 55-2(9). (1981, c. 764, s. 1.)

Editor's Note. — Session Laws 1981, c. 764, s. 4 provides that this Article shall become effective 60 days after ratification and shall be prospective in its application. The act was ratified July 2, 1981.

Session Laws 1981, c. 764, s. 3 contains a severability clause.

§ 133-24. Government contracts; violation of G.S. 75-1 and 75-2.

Every person who shall engage in any conspiracy, combination, or any other act in restraint of trade or commerce declared to be unlawful by the provisions of G.S. 75-1 and 75-2 shall be guilty of a felony under this section where the combination, conspiracy, or other unlawful act in restraint of trade involves:

- (1) A contract for the purchase of equipment, goods, services or materials or for construction or repair let or to be let by a governmental agency;
- (2) A subcontract for the purchase of equipment, goods, services or materials or for construction or repair with a prime contractor or proposed prime contractor for a governmental agency. (1981, c. 764, s. 1.)

§ 133-25. Conviction; punishment.

(a) Upon conviction of violating G.S. 133-24, any person shall be punished as a Class H felon. The court may also impose a fine of up to one hundred thousand dollars (\$100,000) on any convicted individual and a fine of up to one million dollars (\$1,000,000) on any convicted corporation. Any fine imposed pursuant to this section shall not be deductible on a State income tax return for any purpose.

(b) For a period of up to three years from the date of conviction, said period to be determined in the discretion of the court, no person shall be eligible to enter into a contract with any governmental agency, either directly as a contractor or indirectly as a subcontractor, if that person has been convicted of violating G.S. 133-24.

(c) In the event an individual is convicted of violating G.S. 133-24, the court may, in its discretion, for a period of up to three years from the date of conviction, provide that the individual shall not be employed by a corporation as

an officer, director, employee or agent, if that corporation engages in public construction or repair contracts with a governmental agency, either directly as a contractor or indirectly as a subcontractor.

(d) The court shall also have authority to direct the appropriate contractor's licensing board to suspend the license of any contractor convicted of violating G.S. 133-24 for a period of up to three years from the date of conviction. (1981, c. 764, s. 1.)

§ 133-26. Individuals convicted may not serve on licensing boards.

No individual shall be eligible to serve as a member of any contractor's licensing board who has been convicted of criminal charges involving either:

- (1) A conspiracy in restraint of trade in the courts of this State in violation of G.S. 75-1, 75-2, or 133-24, or similar charges in any federal court or in any other state court; or
- (2) Bribery or commercial bribery in violation of G.S. 14-218 or 14-353 in the courts of this State, or of similar charges in any federal court or the court of any other state. (1981, c. 764, s. 1.)

§ 133-27. Suspension from bidding.

Any governmental agency shall have the authority to suspend for a period of up to three years from the date of conviction any person and any subsidiary or affiliate of any person from further bidding to the agency and from being a subcontractor to a contractor for the agency and from being a supplier to the agency if that person or any officer, director, employee or agent of that person has been convicted of charges of engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any federal court or a court of any other state.

A governmental agency may order a temporary suspension of any contractor, subcontractor, or supplier or subsidiary or affiliate thereof charged in an indictment or an information with engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any federal court or a court of this or any other state until the charges are resolved.

The provisions of this section are in addition to and not in derogation of any other powers and authority of any governmental agency. (1981, c. 764, s. 1.)

§ 133-28. Civil damages; liability; statute of limitations.

(a) Any governmental agency entering into a contract which is or has been the subject of a conspiracy prohibited by G.S. 75-1 or 75-2 shall have a right of action against the participants in the conspiracy to recover damages, as provided herein. The governmental agency shall have the option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the governmental agency.

(b) At the election of the governmental agency, the measure of damages recoverable under this section shall be either the actual damages or ten percent (10%) of the contract price which shall be trebled as provided in G.S. 75-16.

(c) The cause of action shall accrue at the time of discovery of the conspiracy by the governmental agency which entered into the contract. The action shall be brought within three years of the date of accrual of the cause of action. (1981, c. 764, s. 1.)

§ 133-29. Reporting of violations of G.S. 75-1 or 75-2.

Any person having knowledge of acts committed in violation of G.S. 75-1 or 75-2 involving a contract with a governmental agency who reports the same to that governmental agency and assists in any resulting proceedings may receive a reward as set forth herein. The governmental agency is authorized to pay to the informant up to twenty-five percent (25%) of any civil damages that it collects from the violator named by the informant by reason of the information furnished by the informant. The information and knowledge to be reported includes but is not limited to any agreement or proposed agreement or offer or request for agreement among contractors, subcontractors or suppliers to rotate bids, to share the profits with a contractor not the low bidder, to sublet work in advance of bidding as a means of preventing competition, to refrain from bidding, to submit prearranged bids, to submit complimentary bids, to set up territories to restrict competition, or to alternate bidding. (1981, c. 764, s. 1.)

§ 133-30. Noncollusion affidavits.

Noncollusion affidavits may be required by rule of any governmental agency from all prime bidders. Any such requirement shall be set forth in the invitation to bid. Failure of any bidder to provide a required affidavit to the governmental agency shall be grounds for disqualification of his bid. The provisions of this section are in addition to and not in derogation of any other powers and authority of any governmental agency. (1981, c. 764, s. 1.)

§ 133-31. Perjury; punishment.

Any person who shall willfully commit perjury in any affidavit taken pursuant to this Article or rules pursuant thereto shall be guilty of a felony and shall be punished as a Class H felon. (1981, c. 764, s. 1.)

§ 133-32. Gifts and favors regulated.

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

- (1) Has a contract with a governmental agency; or
- (2) Has performed under such a contract within the past year; or
- (3) Anticipates bidding on such a contract in the future

to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contract; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contracts; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is also not intended to prohibit customary gifts or favors between employees or officers

and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1.)

§ 133-33. Cost estimates; bidders' lists.

Any governmental agency responsible for letting public contracts may promulgate rules concerning the confidentiality of:

- (1) The agency's cost estimate for any public contracts prior to bidding; and
- (2) The identity of contractors who have obtained proposals for bid purposes for a public contract.

If the agency's rules require that such information be kept confidential, an employee or officer of the agency who divulges such information to any unauthorized person shall be subject to disciplinary action. This section shall not be construed to require that cost estimates or bidders' lists be kept confidential. (1981, c. 764, s. 1.)

Chapter 134A.

Youth Services.

Article 1.

Division of Youth Services in the Department of Human Resources.

Sec.

134A-8. Powers and duties of Secretary of
Human Resources.

ARTICLE 1.

Division of Youth Services in the Department of Human Resources.

§ 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;
- (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.
- (7) To promulgate rules and regulations to implement the provisions of this Chapter and the responsibilities of the Secretary and the Department of Human Resources under Chapter 7A. (1977, c. 627, s. 6; 1981, c. 50, s. 6; c. 614, s. 18.)

Effect of Amendments. — The first 1981 amendment deleted "with the advice of the Youth Services Advisory Committee" from the end of subdivision (5).

The second 1981 amendment, effective July 1, 1981, added subdivision (7).

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

Article 1.

Retirement System for Teachers and State Employees.

Sec.

- 135-1. Definitions.
- 135-3. Membership.
- 135-4. Creditable service.
- 135-5. (Effective until July 1, 1982) Benefits.
- 135-5. (Effective July 1, 1982) Benefits.
- 135-8. Method of financing.

Article 3.

Other Teacher, Employee Benefits.

- 135-33. Hospital and medical insurance.
- 135-33.1. General Assembly medical and hospital care benefit plan.
- 135-34. Disability salary continuation.
- 135-35. [Repealed.]

Sec.

- 135-37. Information received from insurer held confidential.
- 135-38. Committee on Employee Hospital and Medical Benefits.
- 135-39 to 135-49. [Reserved.]

Article 4.

Uniform Judicial Retirement Act of 1973.

- 135-57. Service retirement.
- 135-59. Disability retirement.
- 135-60. (Effective until July 1, 1982) Disability retirement benefits.
- 135-60. (Effective July 1, 1982) Disability retirement benefits.
- 135-62. Return of accumulated contributions.
- 135-72. Benefits of members appointed to serve in United States courts.
- 135-73 to 135-76. [Reserved.]

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:

- (1) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in G.S. 135-8.
- (2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.
- (3) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.
- (4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.
- (5) "Average final compensation" shall mean the average annual compensation, not including any terminal payments for unused sick leave, of a member during the four consecutive calendar years of membership service producing the highest such average.
- (6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Chapter.
- (7) "Board of Trustees" shall mean the Board provided for in G.S. 135-6 to administer the Retirement System.

- (7a) "Compensation" shall mean all salaries and wages, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work.
- (8) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in G.S. 135-4.
- (9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the Board of Trustees shall fix the value of that part of the compensation not paid in money.
- (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.

- (11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.
- (12) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.
- (13) "Member" shall mean any teacher or State employee included in the membership of the System as provided in G.S. 135-3 and 135-4.
- (14) "Membership service" shall mean service as a teacher or State employee rendered while a member of the Retirement System.
- (15) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.
- (16) "Pensions" shall mean payments for life derived from money provided by the State of North Carolina, and by county or city boards of education. All pensions shall be payable in equal monthly installments.
- (17) "Prior service" shall mean service rendered prior to the date of establishment of the Retirement System for which credit is allowable under G.S. 135-4; provided, persons now employed by the Board of Transportation shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to 1931.
- (18) "Public school" shall mean any day school conducted within the State under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the State.
- (19) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7, subsection (b).
- (20) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this Chapter. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.
- (21) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.
- (22) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.
- (23) "Service" shall mean service as a teacher or State employee as described in subdivision (10) or (25) of this section.
- (24) "Social security breakpoint" shall mean the maximum amount of taxable wages under the Federal Insurance Contributions Act as from time to time in effect.
- (25) "Teacher" shall mean any teacher, helping teacher, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State: Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher or employee, and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1. In all cases of doubt, the Board of Trustees, hereinafter [hereinbefore]

defined, shall determine whether any person is a teacher as defined in this Chapter.

- (26) "Year" as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year unless otherwise defined by regulation of the Board of Trustees. (1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 8½; 1959, c. 513, s. 1; c. 1263, s. 1; 1963, c. 687, s. 1; 1965, c. 750; c. 780, s. 1; 1969, c. 44, s. 74; c. 1223, s. 16; c. 1227, s. 1; 1971, c. 117, ss. 1-5; c. 338, s. 1; 1973, c. 507, s. 5; c. 640, s. 2; c. 1233; 1975, c. 475, s. 1; 1977, c. 574, s. 1; 1979, c. 972, s. 1; 1981, c. 557, ss. 1, 2.)

Effect of Amendments. —

The 1981 amendment, effective September 1, 1981, inserted " , not including any terminal

payments for unused sick leave," in subdivisions (5) and (7a).

§ 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 at 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.

- (2) All persons who are teachers or State employees on February 17, 1941, or who may become teachers or State employees on or before July 1, 1941, except those who shall notify the Board of Trustees, in writing, on or before January 1, 1942, that they do not choose to become members of this Retirement System, shall become members of the Retirement System.
- (3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member: Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions were not withdrawn prior to July 1, 1967: Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.
- (4) Notwithstanding any provisions contained in this section, any employee of the State of North Carolina who was taken over and required to perform services for the federal government, on a loan basis, and by virtue of an executive order of the President of the United States effective on or after January 1, 1942, and who on the effective date of such executive order was a member of the Retirement System and had not withdrawn all of his or her accumulated contributions, shall be deemed to be a member of the Retirement System during such period of federal service or employment by virtue of such executive order of the President of the United States. Any such employee who within a period of 12 months after the cessation of such federal service or employment, is again employed by the State or any employer as said term is defined in this Chapter, or within said period of 12 months engages in service or membership service, shall be permitted to resume active participation in the Retirement System

and to resume his or her contributions as provided by this Chapter. If such member so elects, he or she may pay to the Board of Trustees for the benefit of the proper fund or account an amount equal to his or her accumulated contributions previously withdrawn with interest from date of withdrawal to time of payment and the accumulated contributions, with interest thereon, that such member would have made during such period of federal employment to the same extent as if such member had been in service or engaged in the membership service for the State or an employer as defined in this Chapter, which such payment of accumulated contributions shall be computed on the basis of the salary or earnable compensation received by such member on the effective date of such executive order.

- (5) Any teacher or State employee whose membership is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership; but no such teacher or State employee shall receive prior service credit unless he elected to become a member prior to July 1, 1946. Any such member on or after June 30, 1965, anything in this Chapter to the contrary, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank on or before January 1, 1942, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.
- (6) No person who becomes a teacher or employee, as the terms are defined in this Chapter, shall thereby become a member of the Retirement System who is elected, appointed, employed or reemployed after he has attained the age of 62 years: Provided, however, that this will not apply to any member whose account is active upon his return to service.
- (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 appli-

cation 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 compensation received for the 12 months of service prior to retirement. 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 aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b1); provided that such benefits will be computed in accordance with (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with (b3) on or after July 1, 1969. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested.

- b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

<i>Age at Retirement</i>	<i>Percentage Reduction</i>
59	7
58	14
57	20
56	25

<i>Age at Retirement</i>	<i>Percentage Reduction</i>
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; 1981, c. 979, s. 1.)

Effect of Amendments.—The 1981 amendment substituted "compensation received for the 12 months of service prior to retirement" for

"average final compensation" at the end of the first sentence of paragraph e.

§ 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.

(b) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all services in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service.

(c) Subject to the above restrictions and to such other rules and regulations as the Board of Trustees may adopt, the Board of Trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service the Board of Trustees may use for the purpose of this Chapter the compensation rates which will be determined by the average salary of the members for five years immediately preceding the date this System became operative as the records show the member actually received.

(d) Any member may, up to his date of retirement and within one year thereafter, request the Board of Trustees to modify or correct his prior service credit.

(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 not to exceed one month of credit for each two years of membership service or fraction 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 60 months of aggregate service, or five 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) Repealed by Session Laws 1981, c. 636, s. 1.
- (g) Teachers and other State employees who served in the armed forces of the United States and who, after being honorably discharged, returned to the service of the State within a period of two years from date of discharge shall be credited with prior service for such period of service in the armed forces of the United States; and the salaries or compensations paid to such employees immediately before entering the armed forces shall be deemed to be the actual compensation rates of such teachers and State employees during said period of service.
- (h) During periods when a member is on leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 135-8(b) (5). If he is so contributing, the annual rate of compensation paid to such employee

immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence.

(i) Any person who became a member after June 30, 1947, and before July 1, 1955, and did not subsequently withdraw his contributions may, prior to his retirement, increase his creditable service to the extent of the period of time from the date he became a "teacher or employee" as the terms are defined in this Chapter to the date he became a member, but not exceeding three months immediately preceding membership, provided that he makes an additional contribution in one lump sum equal to five per centum (5%) of the compensation he received for the aforesaid period of time plus regular interest thereon from the date he became a member to the date of payment.

(j) Creditable service at retirement shall include any service rendered by a member while on leave of absence to serve as a member or officer of the General Assembly which is not creditable toward retirement under the Legislative Retirement Fund provided the allowance of such credit shall be contingent upon the cancellation of service credit in the Fund and the transfer of the member's contributions plus accumulated interest from the Fund to this System.

(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) Repealed by Session Laws 1981, c. 636, s. 1.

(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 unredacted retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary.

(n), (o) Repealed by Session Laws 1981, c. 636, s. 1.

(p) Credit for prior temporary State employment. — Notwithstanding any other provision of this Chapter, a member may purchase service credit for

temporary State employment upon completion of 10 years of membership service and subject to the condition that the member had been classified as a temporary employee for more than three years. Each employer shall certify to the Board of Trustees that an employee is eligible to purchase this service credit prior to the member making payment. Payment for the service credit shall be in a single lump sum based upon the amount the member would have contributed if he had been properly classified as a permanent employee and been a member of this retirement system. (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, cc. 317, 790; 1979, c. 826; c. 866, s. 2; c. 867; c. 972, s. 3; 1981, c. 557, s. 3; c. 636, s. 1; 1981, c. 1116, s. 1.)

Effect of Amendments. —

The first 1981 amendment, effective September 1, 1981, inserted "not to exceed one month of credit for each two years of membership service or fraction thereof" in the first paragraph of subsection (e).

The second 1981 amendment, effective July 1, 1981, deleted subdivision (f)(6) which concerned purchase of service credit for service in the armed forces of the United States, subsection (l) which concerned purchase of credit for

service to governmental entities, subsection (n) which defined "out-of-state service", and subsection (o) which concerned purchase of credit for time spent as a court reporter prior to establishment of the Uniform Court System. Session Laws 1981, c. 636, s. 1 provided that any inchoate or accrued rights of any member on July 1, 1981, shall not be diminished.

The third 1981 amendment added subsection (p).

§ 135-5. (Effective until July 1, 1982) Benefits.

(a) Service Retirement Benefits. —

- (1) Any member 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 and have at least five years of membership service or shall have completed 30 years of creditable 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 seventieth birthday: Provided that, upon the approval of his employer, any member may be continued in service on a year-to-year basis.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

- (1) Any annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:
 - a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and

- b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, 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, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of forty-eight hundred dollars (\$4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) 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 rendered after January 1, 1966.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 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).

(b2) Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, 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, 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.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent ($\frac{1}{3}$ 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).

(b3) Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, 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 on or after this sixty-second birthday and 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.
 - (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 ($\frac{1}{4}$ 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) If the member's service retirement date occurs before his sixty-second birthday but on or after 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-second birthday.
 - (4) 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).
- (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 ($1\frac{1}{4}\%$) 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 ($1\frac{1}{2}\%$) 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 ($\frac{1}{4}$ 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).
- (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 Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980, 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).

(b7) Service Retirement Allowance of Members Retiring on or after July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1980, 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 or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) 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.
- (3) 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 (2) above.

(4) 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).

(c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the board of trustees, on the first day of any calendar month, not less than 30 and not more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;
- (2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(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.

(e) Reexamination of Beneficiaries Retired for Disability. — Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent ($1/10$ th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable.
- (2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement 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. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.
- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a below reduced by the amount in b below:
 - a. 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.
 - b. The actuarial equivalent of the retirement benefits he previously received.

- (4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement System shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(f) Return of Accumulated Contributions. — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from receipt in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. Notwithstanding any other provision of Chapter 135, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State; provided that, notwithstanding any other provisions of this Chapter, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be a teacher or State employee, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; provided, further, that such agency or subdivision shall have notified the executive director of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions.

(g) Election of Optional Allowance. — With the provisions 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. Provided, however, any member having elected Options 2, 3, 5, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

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.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947. — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members. — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the contrary, be entitled to any membership service credits he had when his membership ceased; and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

- (1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars (\$15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars (\$70.00) per month.
- (2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars (\$10.00) per month; provided, that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(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 to 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 (l) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After December 31, 1968 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; 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.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) The member had attained age 50 with at least 20 years of creditable service, or had attained age 55 regardless of length of service, or had credit for at least 30 years of service regardless of age.
 - (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.
 - (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.
- (n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(o) *Post-Retirement Increases in Allowances.* — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

<i>Increase In Index</i>	<i>Increase In Allowance</i>
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum, but not more than four per centum (4%); provided that any such increase in allowances shall become effective only if the additional liabilities on account of such increase do not require an increase in the total employer rate of contributions.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

(p) *Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967.* — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on

account of persons who commenced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Year(s) in Which Benefits Commenced</i>	<i>Percentage</i>
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, effective July 1, 1973, any member who retired after attaining the age of 60 with 15 or more years of creditable service shall receive a monthly benefit of no less than seventy-five dollars (\$75.00) prior to the application of any optional benefit.

(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.

(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 roll 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.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (cc) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(cc) Increases in Benefits to Those Persons Who Were Retired prior to July 1, 1977. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(dd) From and after July 1, 1981, the retirement allowance to or on account of the beneficiaries whose retirement commenced prior to July 1, 1980, shall be increased by three percent (3%). These increases shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (ee) of this section.

(ee) Adjustment in Allowances Paid Beneficiaries Whose Retirement Commenced prior to July 1, 1980. — From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under — (bb), (cc) and (dd) of this section. (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; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2.)

Cross References. — For this section as amended effective July 1, 1982, see the following section, also numbered 135-5.

Effect of Amendments. —

Session Laws 1981, c. 672, in the first sentence of subsection (f), substituted "his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon" for "the sum of his contributions and the accumulated regular interest thereon." Session Laws 1981, c. 672, s. 5, makes the 1981 amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

Session Laws 1981, c. 689, effective July 1, 1981, added the second proviso in the first paragraph of subsection (c).

Session Laws 1981, c. 859, effective on and after July 1, 1980, substituted "(cc)" for "(x4)" near the end of the first sentence in subsection (bb), and added subsections (dd) and (ee).

Session Laws 1981, c. 940, added the third proviso in the first paragraph of subsection (c) including subdivisions (1) and (2), and added the second paragraph of subsection (c).

Session Laws 1981, c. 975, rewrote subdivision (1) of subsection (e).

Session Laws 1981, c. 978, deleted "in service" following "Any member" near the beginning of subdivision (1) of subsection (a), and substituted "60 years and have at least 5 years of membership service or shall have completed 30 years of creditable service" for "60 years or shall have completed 30 years of service, and notwithstanding that, during such period of notification, he may have separated from service" at the end of the proviso at the end of subdivision (1) of subsection (a). The amendment also deleted "regardless of his years of creditable service" following "sixty-fifth birthday" near the beginning of subdivision (1) of subsection (b7).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

CASE NOTES

Grant of Disability Retirement Benefits Terminated Status as "Career Teacher". —

The granting of a career teacher's application for disability retirement benefits under the Teachers' and State Employees' Retirement System operated as an acceptance of her resignation by implication and terminated her status as a "career teacher" under § 115-142, since a finding that her disability was "likely to

be permanent" was implicit in the granting of her application for disability retirement benefits (subsection (c)), and this finding rendered her status as a disabled retiree wholly inconsistent with her former status as a "career teacher." *Meachan v. Montgomery County Bd. of Educ.*, 47 N.C. App. 271, 267 S.E.2d 349 (1980).

§ 135-5. (Effective July 1, 1982) Benefits.**(a) Service Retirement Benefits. —**

- (1) Any member 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 and have at least five years of membership service or shall have completed 30 years of creditable 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 seventieth birthday: Provided that, upon the approval of his employer, any member may be continued in service on a year-to-year basis.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:
 - a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and
 - b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, 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, such allowance shall be equal to the sum of (i) one

percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of forty-eight hundred dollars (\$4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) 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 rendered after January 1, 1966.

- (2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 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).

(b2) Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, 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, 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.

- (2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent ($\frac{1}{3}$ 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).

(b3) Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, 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 on or after his sixty-second birthday and 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.

- (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 ($\frac{1}{4}$ 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) If the member's service retirement date occurs before his sixty-second birthday but on or after 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-second birthday.

- (4) 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).

(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 ($1\frac{1}{4}\%$) 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 ($1\frac{1}{2}\%$) 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 ($\frac{1}{4}$ 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).

(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 Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980,

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).
- (b7) Service Retirement Allowance of Members Retiring on or after July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1980, 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 or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
 - (2) 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.
 - (3) 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 (2) above.
 - (4) 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).
- (c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the board of trustees, on the first day of any calendar month, not less than 30 and not more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful

employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;
- (2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age 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.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired for Disability. — Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability

retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable.

- (2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement 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. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.
- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a below reduced by the amount in b below:
 - a. 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.
 - b. The actuarial equivalent of the retirement benefits he previously received.
- (4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of

his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement System shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(f) Return of Accumulated Contributions. — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from receipt in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. Notwithstanding any other provision of Chapter 135, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State; provided that, notwithstanding any other provisions of this Chapter, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be a teacher or State employee, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; provided, further, that such agency or subdivision shall have notified the executive director of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions.

(g) Election of Optional Allowance. — With the provision that 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 the first retirement check has been cashed. Provided, however, any member having elected Options 2, 3, 5, or 6 and

nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

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.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947. — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be

computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members. — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

(1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars (\$15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars (\$70.00) per month.

(2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars (\$10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(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 (l) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After December 31, 1968 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; 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.

(m) **Survivor's Alternate Benefit.** — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) The member had attained age 50 with at least 20 years of creditable service, or had attained age 55 regardless of length of service, or had credit for at least 30 years of service regardless of age.

(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(o) *Post-Retirement Increases in Allowances.* — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

<i>Increase In Index</i>	<i>Increase In Allowance</i>
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum, but not more than four per centum (4%); provided that any such increase in allowances shall become effective only if the additional liabilities on account of such increase do not require an increase in the total employer rate of contributions.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

(p) *Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967.* — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1963 and

before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Year(s) in Which Benefits Commenced</i>	<i>Percentage</i>
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, effective July 1, 1973, any member who retired after attaining the age of 60 with 15 or more years of creditable service shall receive a monthly benefit of no less than seventy-five dollars (\$75.00) prior to the application of any optional benefit.

(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.

(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.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (cc) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(cc) Increases in Benefits to Those Persons Who Were Retired Prior to July 1, 1977. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(dd) From and after July 1, 1981, the retirement allowance to or on account of the beneficiaries whose retirement commenced prior to July 1, 1980, shall be increased by three percent (3%). These increases shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (ee) of this section.

(ee) Adjustment in Allowances Paid Beneficiaries Whose Retirement Commenced Prior to July 1, 1980. — From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (dd) of this section. (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; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2; c. 980, ss. 3, 4.)

Cross References. — For this section as in effect until July 1, 1982, see the preceding section, also numbered 135-5.

Effect of Amendments. —

Session Laws 1981, c. 672, in the first sentence of subsection (f), substituted "his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon" for "the sum of his contributions and the accumulated regular interest thereon." Session Laws 1981, c. 672, s. 5, makes the 1981 amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

Session Laws 1981, c. 689, effective July 1, 1981, added the second proviso in the first paragraph of subsection (c).

Session Laws 1981, c. 859, effective on and after July 1, 1980, substituted "(cc)" for "(x4)" near the end of the first sentence in subsection (bb), and added subsections (dd) and (ee).

Session Laws 1981, c. 940, added the third proviso in subsection (c), containing subdivi-

sions (1) and (2), and added the second paragraph of subsection (c).

Session Laws 1981, c. 975, rewrote subdivision (1) of subsection (e).

Session Laws 1981, c. 978, deleted "in service" following "Any member" near the beginning of subdivision (1) of subsection (a), and substituted "60 years and have at least 5 years of membership service or shall have completed 30 years of creditable service" for "60 years or shall have completed 30 years of service, and notwithstanding that, during such period of notification, he may have separated from service" at the end of the proviso at the end of subdivision (1) of subsection (a). The amendment also deleted "regardless of his years of creditable service" following "sixty-fifth birthday" near the beginning of subdivision (1) of subsection (b7).

Session Laws 1981, c. 980, effective July 1, 1982, inserted "but prior to July 1, 1982" in the catchline and the text of subsection (d3) and added subsection (d4). The amendment also substituted "of this section" for "above" following "subsection (c)" in subsection (d3).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 135-8. Method of financing.

(a) Funds to Which Assets of Retirement System Credited. — All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of four funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, and the pension reserve fund.

(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 any 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) The board of trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer for the sole purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer. This creditable service shall be limited to a career total of four years for each member and may be obtained in the following manner:

- a. Approved leave of absence. — Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.
- b. No educational leave policy. — Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.
- c. Educational program prior to July 1, 1981. — Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to 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 retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance as determined by the board of trustees upon the advice of the consulting actuary, plus a fee to be determined by the board of trustees.

Payments required to be made by the member under subparagraphs a or b above shall be due by the 15th of the month following the month for which service credit is allowed and payments made after the due date shall be assessed a one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the due date; provided, however, the member shall forfeit the right to continue contributions if any payment is not made within 90 days of the due date and payments made shall be refunded and service credits cancelled if the member does not become a contributing employee within 12 months after completing the educational program and fails to complete three years of subsequent consecutive membership service except in the event of death or disability.

- (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.

(c) Annuity Reserve Fund. — The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this Chapter. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(d) Pension Accumulation Fund. — The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) On account of each member there shall be paid in the pension accumulation fund by employers an amount equal to a certain percentage of the actual compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation the normal contribution shall be two and fifty-seven one-hundredths percent (2.57%) for teachers, and one and fifty-seven one-hundredths percent (1.57%) for State employees, and the accrued liability contribution shall be two and ninety-four one-hundredths percent (2.94%) for teachers and one and fifty-nine one-hundredths percent (1.59%) of the salary of other State employees.
- (2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the Board of Trustees, the actuary engaged by the Board to make each valuation required by this Chapter during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the Board of Trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.
- (3) Immediately succeeding the first valuation the actuary engaged by the Board of Trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four percent (4%) of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the afore-said normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution"

rate. Such rate shall be increased on the basis of subsequent valuations if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined. Upon certification by the actuary engaged by the Board of Trustees that the accrued liability contribution rate may be reduced without impairing the Retirement System, the Board of Trustees may cause the accrued liability contribution rate to be reduced.

- (4) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total actual compensation of all members during the preceding year: Provided, however, that, subject to the provisions of subdivision (3) of this subsection the amount of each annual accrued liability contribution shall be at least three percent (3%) greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.
- (5) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value as actuarially computed and approved by the Board of Trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.
- (6) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employer shall be paid from the pension accumulation fund.
- (7) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(e) Pension Reserve Fund. — The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(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 Treasury 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.

(g) Merger of Annuity Reserve Fund and Pension Reserve Fund into Pension Accumulation Fund. — Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the Board of Trustees may determine, the annuity reserve fund and the pension reserve fund shall be merged into and become a part of the pension accumulation fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the Board of Trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System.

(h) Repealed by Session Laws 1965, c. 780, s. 1. (1941, c. 25, s. 8; c. 143; 1943, c. 207; 1947, c. 458, ss. 1, 2, 8; 1955, c. 1155, ss. 3-5; 1959, c. 513, s. 4; 1963, c. 687, ss. 4, 5; 1965, c. 780, s. 1; 1967, c. 720, ss. 12, 13; 1969, c. 1223, s. 13; 1971, c. 117, ss. 2, 10; 1975, c. 457, s. 5; c. 879, s. 46; 1977, c. 909; 1981, c. 636, s. 1; 1981, c. 1000, ss. 1, 2.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, deleted the second sentence of subdivision (b)(5) which provided for the purchase of credit by employees for periods of absence for purposes of education which increased the employee's efficiency on his or her return to state employment in cases where the employee had unsuccessfully petitioned for an official leave of absence. Session Laws 1981, c. 636, s. 1, provided that any inchoate or accrued rights of any member on July 1, 1981, shall not be diminished.

The second 1981 amendment rewrote subdivision (5) of subsection (b), and deleted the former second sentence of subdivision (1) of subsection (d), which read: "In addition, such contributions by employers will be required for each member on leave of absence who makes monthly contributions in accordance with (b)(5) above, and will be based on the salary or wage the member was receiving at the time the leave of absence was granted."

ARTICLE 3.

Other Teacher, Employee Benefits.

§ 135-33. Hospital and medical insurance.

(a) The Committee on Employee Hospital and Medical Benefits shall formulate and establish for teachers and State employees, including all employees of the General Assembly other than participants in the Legislative Intern Program and pages, a program of hospital and medical care benefits to the extent that funds for those benefits are specifically appropriated by the General Assembly. The program may be provided by the Committee either directly or through the purchase of contracts, or by a combination of those methods, as in its discretion the Committee considers wise and expedient. In awarding any contract pursuant to this section, the Committee shall consider the total or overall cost of complete family coverage by teachers and State employees. Once formulated and established by the Committee, the program shall be administered by the Board of Trustees of the Retirement System, subject to the direction of the Committee.

(b) 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.

(c) The Committee on Employee Hospital and Medical Benefits 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.

(d) For the support of the benefits made available to any member vested at the time of retirement, their spouses or surviving spouses, and the surviving spouses of employees who are receiving a survivor's alternate benefit under

G.S. 135-5(m) of those associations listed in G.S. 135-27(a), licensing and examining boards under G.S. 135-1.1, the North Carolina Art Society, Inc., and the North Carolina Symphony Society, Inc., each association, organization or board shall pay to the Retirement System the full cost of providing these benefits under this section as determined by the Board of Trustees of the Retirement System. In addition, each association, organization or board shall pay to the Retirement System an amount equal to the cost of the benefits provided under this section to presently retired members of each association, organization or board since such benefits became available at no cost to the retired member. (1971, c. 1009, s. 1; 1973, c. 746; c. 1278, s. 1; 1975, c. 754, s. 1, c. 24; 1977, 2nd Sess., c. 1136, s. 18.1; 1979, c. 972, s. 5; 1979, 2nd Sess., c. 1217; 1981, c. 859, ss. 13.12, 13.13.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, rewrote subsection (a), and substituted "Committee on Employee Hospital and Medical

Benefits" for "Board of Trustees" at the beginning of subsection (c).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 135-33.1. General Assembly medical and hospital care benefit plan.

The Committee on Employee Hospital and Medical Benefits shall formulate and establish 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 the program. Once formulated and established by the Committee, the program shall be administered by the Board of Trustees of the Retirement System, subject to the direction of the Committee. 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 Committee on Employee Hospital and Medical Benefits 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; 1981, c. 859, ss. 13.14, 13.15.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "The Committee on Employee Hospital and Medical Benefits shall formulate and establish" for "The Board of Trustees of the Retirement System shall formulate, establish and administer" at the beginning of the first sentence, substituted "the program" for "such program" at the end of

the first sentence, added the second sentence, and substituted "Committee on Employee Hospital and Medical Benefits" for "board of trustees" near the beginning of the last sentence.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 135-34. Disability salary continuation.

The Committee on Employee Hospital and Medical Benefits shall formulate and establish for teachers and State employees with one or more years of service, including all employees of the General Assembly other than participants in the Legislative Intern Program and pages, a program of disability

salary continuation benefits to the extent that funds for those benefits are specifically appropriated by the General Assembly. The program may be provided by the Committee either directly or through the purchase of contracts, or by a combination of those methods, as in its discretion the Committee considers wise and expedient. Once formulated and established by the Committee, the program shall be administered by the Board of Trustees of the Retirement System subject to the direction of the Committee. 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; 1981, c. 859, s. 13.16.)

Effect of Amendments. —

The 1981 amendment, effective July 1, 1981, substituted "The Committee on Employee Hospital and Medical Benefits shall formulate and establish" for "The Board of Trustees of the Retirement System shall formulate, establish and administer" at the beginning of the first sentence, substituted "other than participants" for "except for participants" near the middle of the second sentence, and substituted "those benefits" for "such benefits" near the end of the

first sentence. The amendment also substituted the second sentence for the former second sentence, which read: "Such a program may be provided by the Board either directly or through the purchase of contracts therefore, or any combination thereof, as in its discretion it may deem wise and expedient," and added the third sentence.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 135-35: Repealed by Session Laws 1981, c. 859, s. 13.17, effective July 1, 1981.

Editor's Note. — Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 135-37. Information received from insurer held confidential.

Any information received from an insurer contracted with by the Retirement System under the provisions of this Article and concerning an individual insured shall be held confidential and shall be exempt from the provisions of Chapter 132 of the General Statutes or any other provision requiring information and records held by State agencies to be made public or accessible to the public. This section shall apply to all information concerning individuals, including the fact of coverage or noncoverage, whether or not a claim has been filed, medical information, whether or not a claim has been paid, and any other information or materials concerning an individual claim, claimant, or insured, including spouses, dependents and persons believed to be claimants or insureds, or spouses and dependents of claimants or insureds. Provided, however, such information may be released to the State Auditor or to the Attorney General in furtherance of his statutory duties and responsibilities and shall retain its character as confidential information exempt from Chapter 132 of the General Statutes and other provisions of a similar nature when so acquired by the State Auditor or the Attorney General. (1981, c. 355.)

Editor's Note. — Session Laws 1981, c. 859, s. 98, makes the act effective July 1, 1981.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 135-38. Committee on Employee Hospital and Medical Benefits.

(a) The Committee on Employee Hospital and Medical Benefits shall consist of 12 members as follows:

- (1) The President Pro Tempore of the Senate;
- (2) The Chairman of the Senate Committee on Ways and Means;
- (3) The Chairman of the Senate Committee on Appropriations;
- (4) The Chairman of the Senate Committee on Base Budget;
- (5) The Chairman of the Senate Committee on Finance;
- (6) One other member of the Senate appointed by the President of the Senate;
- (7) The Speaker Pro Tempore of the House of Representatives;
- (8) The Chairman of the House Committee on Appropriations Base Budget;
- (9) The Chairman of the House Committee on Appropriations Expansion Budget;
- (10) The Chairman of the House Committee on Finance; and
- (11) Two other members of the House appointed by the Speaker.

(b) The members of the Committee who are members because of the offices they hold shall remain on the Committee for the duration of their terms in those offices. The President of the Senate and Speaker of the House shall appoint the other members of the Committee for two-year terms beginning on July 1 of odd-numbered years.

(c) The Committee shall formulate and establish programs for hospital, medical care and disability salary continuation benefits as provided in G.S. 135-33, 135-33.1 and 135-34. In formulating and establishing those programs the Committee may consult with the Board of Trustees of the Retirement System. The Board of Trustees and the director, staff, and advisors of the Retirement System shall provide the Committee with any information or assistance requested by the Committee in performing its duties under this Article.

(d) The time members spend on Committee business shall be considered official legislative business for purposes of G.S. 120-3. (1981, c. 859, s. 13.18.)

§§ 135-39 to 135-49: Reserved for future codification purposes.

ARTICLE 4.

Uniform Judicial Retirement Act of 1973.

§ 135-57. Service retirement.

(a) Any member on or after January 1, 1974, who has attained his fiftieth birthday and five years of membership 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 and filing thereof, he desires to be retired.

(b) Any member who is a justice or judge of the appellate division of the General Court of Justice shall be automatically retired as of the first day of the calendar month coinciding with or next following the later of January 1, 1974, or his attainment of his seventy-second birthday and each other member shall be automatically retired as of the first day of the calendar month coinciding with or next following the later of January 1, 1974, or his attainment of his seventieth birthday; provided, however, that no judge who is a member on January 1, 1974, shall be forced to retire under the provisions of this subsection

at an earlier date than the last day that he is permitted to remain in office under the provisions of G.S. 7A-4.20.

(c) Any member who terminates service on or after January 1, 1974, having accumulated five or more years of creditable service may retire under the provisions of subsection (a) above, provided that he shall not have withdrawn his accumulated contributions prior to the effective date of his retirement, and the requirement of subsection (a) that the member be in service shall not apply. (1973, c. 640, s. 1; 1981, c. 978, s. 6.)

Effect of Amendments. — The 1981 amendment deleted "in service" following "Any member" and inserted "and five years of membership service" near the beginning of sub-

section (a), and substituted "execution and filing" for "execution of and the filing" near the end of subsection (a).

§ 135-59. Disability retirement.

Upon application by or on behalf of the member, any member in service who has completed five or more years of creditable service and who has not attained his sixty-fifth birthday may be retired by the Board of Trustees, on the first day of any calendar month, not less than 30 and not more than 90 days next following the date of filing such application, on a disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; and, provided further, that if a member is removed by the Supreme Court for mental or physical incapacity under the provisions of G.S. 7A-376, no action is required by the medical board under this section and, provided further, the medical board shall determine if the member is able to engage in gainful employment and, if so, the member shall still be retired and the disability retirement allowance as a result thereof shall be reduced as in G.S. 135-60(d). Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the Retirement System to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls. (1973, c. 640, s. 1; 1981, c. 689, s. 3; c. 940, s. 2.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, added the last proviso in the first sentence.

The second 1981 amendment added the second sentence, containing subdivisions (1) and (2), and added the second paragraph.

§ 135-60. (Effective until July 1, 1982) Disability retirement benefits.

(a) Upon retirement for disability in accordance with G.S. 135-59, a member shall receive a disability retirement allowance computed and payable as provided for service retirement in G.S. 135-58(a) except that the member's creditable service shall be taken as the creditable service he would have completed at his sixty-fifth birthday if he had continued in service to such birthday

as a judge in the same division of the General Court of Justice in which he was serving on his disability retirement date.

(b) Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained his sixtieth birthday to undergo a medical examination, such examination to be made at the place of residence of the beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained his sixtieth birthday refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, it shall be assumed that he is no longer disabled.

(c) Should the medical board certify to the Board of Trustees that a disability beneficiary prior to his sixty-fifth birthday has recovered to the extent that he would not satisfy the requirements for disability retirement if he were an active member of the Retirement System, or if his disability shall be assumed to have terminated in accordance with subsection (b) above, his disability retirement allowance shall thereupon cease, he shall be restored as a member of the Retirement System, and the period during which he was in receipt of a disability retirement allowance shall not be included in his creditable service.

(d) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable. (1973, c. 640, s. 1; 1981, c. 975, s. 4.)

Cross References. — For this section as amended effective July 1, 1982, see the following section, also numbered 135-60.

Effect of Amendments. — The 1981 amendment added subsection (d).

§ 135-60. (Effective July 1, 1982) Disability retirement benefits.

(a) Upon retirement for disability in accordance with G.S. 135-59, a member shall receive a disability retirement allowance computed and payable as provided for service retirement in G.S. 135-58(a) except that the member's creditable service shall be taken as the creditable service he would have had

had he continued in service to the earliest date he could have retired on an unreduced service retirement allowance as a judge in the same division of the General Court of Justice in which he was serving on his disability retirement date.

(b) Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained his sixtieth birthday to undergo a medical examination, such examination to be made at the place of residence of the beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained his sixtieth birthday refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, it shall be assumed that he is no longer disabled.

(c) Should the medical board certify to the Board of Trustees that a disability beneficiary prior to his sixty-fifth birthday has recovered to the extent that he would not satisfy the requirements for disability retirement if he were an active member of the Retirement System, or if his disability shall be assumed to have terminated in accordance with subsection (b) above, his disability retirement allowance shall thereupon cease, he shall be restored as a member of the Retirement System, and the period during which he was in receipt of a disability retirement allowance shall not be included in his creditable service.

(d) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable. (1973, c. 640, s. 1; 1981, c. 975, s. 4; c. 980, s. 5.)

Cross References. — For this section as in effect until July 1, 1982, see the preceding section, also numbered 135-60.

Effect of Amendments. — The first 1981 amendment added subsection (d).

The second 1981 amendment, effective July

1, 1982, substituted, in subsection (a), "had had he continued in service to the earliest date he could have retired on an unreduced service retirement allowance" for "completed at his sixty-fifth birthday if he had continued in service to such birthday."

§ 135-62. Return of accumulated contributions.

(a) Should a member cease to be a judge otherwise than by death or retirement under the provisions of this Article, he shall, upon submission of an application, be paid, not earlier than 60 days from receipt in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System, his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service as a judge. Upon payment of such accumulated contributions his membership in the Retirement System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered, except as otherwise provided in G.S. 135-56(b). Any such payment of a member's accumulated contributions shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article.

(b) Any other provision of this Article to the contrary notwithstanding, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State; provided that, notwithstanding any other provisions of this Article, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be a judge, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; and provided further, that such agency or subdivision shall have notified the director of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions. (1973, c. 640, s. 1; 1981, c. 672, s. 4.)

Effect of Amendments. — The 1981 amendment, in the first sentence of subsection (a), substituted "his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon" for "the

amount of his accumulated contributions." Session Laws 1981, c. 672, s. 5, makes the 1981 amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

§ 135-72. Benefits of members appointed to serve in United States courts.

(a) Members who are appointed to serve as a justice, judge or magistrate in the United States courts shall not be eligible for benefits under this Article while actively serving as a justice, judge or magistrate in the United States courts.

(b) Should a retired former member be appointed to serve as a justice, judge or magistrate in the United States courts or be in receipt of a retirement allowance from service as a justice, judge or magistrate in the United States courts, his retirement allowance provided under the provisions of this Article shall be reduced so that the sum of his retirement allowance and the salary or retirement allowance from service as a justice, judge or magistrate in the United States courts does not exceed the salary for the office last held by the

retired member in the General Court of Justice of North Carolina. Provided, however, that under no circumstances will the retired member's retirement allowance be reduced below the amount of his annuity resulting from his accumulated contributions. (1981, c. 978, s. 7.)

§§ 135-73 to 135-76: Reserved for future codification purposes.

Chapter 136.

Roads and Highways.

Article 1

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Sec.

136-13.2. Falsifying highway inspection reports.

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Article 2A.

State Roads Generally.

136-44.2. Budget and appropriations.

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ARTICLE 1.

Organization of Department of Transportation.

§ 136-10. Annual audits; report of audit to General Assembly.

CASE NOTES

Stated in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina*

Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 136-11. Annual reports to Governor.**CASE NOTES**

Stated in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina* Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 136-12. Reports to General Assembly.**CASE NOTES**

Stated in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina* Dep't Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 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 or required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(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 Class H felony.

(c) Repealed by Session Laws 1979, c. 786, s. 2, effective May 8, 1979. (1979, c. 523; c. 786, s. 2; 1981, c. 793, s. 1.)

Effect of Amendments. —

The 1981 amendment, effective October 1,

1981, substituted "Class H felony" for "misdemeanor" in subsections (a) and (b).

ARTICLE 2.***Powers and Duties of Department and Board of Transportation.*****§ 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 any of such material, at a price to be fixed by said 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 highways.

nance 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, c. 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; 1981, c. 682, s. 19.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, provided for the correction of an error last appearing in the 1979

cumulative supplement. The error was corrected in the 1981 replacement volume.

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over thirty thousand dollars (\$30,000) 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 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 thirty thousand dollars (\$30,000) or less, at least three informal bids shall be solicited. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time.

(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 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) The Department of Transportation is required to solicit proposals under rules and regulations published by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction or repair that are over ten thousand dollars (\$10,000). The right to reject any and all proposals is reserved to the Board of Transportation, but the award of these contracts, if approved by the Board of Transportation, shall be subject to the approval of the Advisory Budget Commission.

(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; 1981, c. 200, ss. 1, 2; c. 859, s. 68.)

Effect of Amendments. —

The first 1981 amendment substituted "thirty thousand dollars (\$30,000)" for "ten thousand dollars (\$10,000)" in the first sentence of subsection (a) and in the first sentence of subsection (b) and substituted the second and third sentences of subsection (b) for a sentence which permitted waiver of the requirement for

solicitation of bids where solicitation of such bids was not feasible and was not in the public interest.

The second 1981 amendment, effective July 1, 1981, rewrote subsection (f).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 136-29. Adjustment of claims.

CASE NOTES

Categorization of Claims. — Where plaintiff contractor submitted in its verified claim letter a claim for increased compensation due to the encountering of changed conditions, and where plaintiff, while identifying and categorizing certain claims for the benefit of the defendant, made it abundantly clear that any such claims not recognized in the separate

categories as presented were to be included in an overall "changed conditions" claim, it was held that plaintiff did not pursue or recover at trial on a theory which had not been previously presented to the State Highway Administrator. *S.J. Groves & Sons & Co. v. State*, 50 N.C. App. 1, 273 S.E.2d 465 (1980).

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(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 and three-eighths cents (1 $\frac{3}{8}\text{¢}$) 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 State Budget Officer. 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 alloca-

tion 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 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.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section and of G.S. 136-41.2, the unincorporated area known as Butner qualifies in all respects for allocation of funds under this section and certification of the population and street mileage of Butner by the North Carolina Department of Human Resources is acceptable. Funds allocated to the area for this purpose shall be administered by the member of the State Board of Transportation administering the Highway Fund in Granville 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; 1979, 2nd Sess., c. 1137, s. 50; 1981, c. 690, s. 4; c. 859, s. 9.2; c. 1127, s. 54.)

Effect of Amendments. —

The first 1981 amendment, effective July 1, 1981, substituted "one and three-eighth cents (1³/₈¢)" for "one cent (1¢)" in the first paragraph of subsection (a).

Session Laws 1981, c. 690, s. 35, provides: "Section 4 [amending this section] shall become effective July 1, 1981, provided that the allocation made on October 1, 1981, shall not be affected."

The second 1981 amendment, effective July 1, 1981, added subsection (c).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

The third 1981 amendment, ratified October 10, 1981 and effective on ratification, substituted "member of the State Board of Transpor-

tation administering the Highway Fund in Granville County" for "Department of Human Resources" in subsection (c) as added by the first 1981 amendment.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

§ 136-42.1. Archeological objects on highway right-of-way.

CASE NOTES

Quoted in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina*

Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

ARTICLE 2A.

State Roads Generally.

§ 136-44.1. Statewide road system; policies.

CASE NOTES

Stated in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina*

Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 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.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Joint Legislative Commission on Governmental Operations has given its prior approval for that expenditure or has failed to give or deny approval within 60 days of receiving a request for approval from the Department of Transportation. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

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; 1981, c. 859, s. 84.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote the fourth paragraph.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 136-44.2A. Secondary road construction.

There shall be annually allocated out of the State Highway Fund to the Department of Transportation for secondary road construction programs developed pursuant to G.S. 136-44.7 and 136-44.8, a sum equal to that allocation made under G.S. 136-41.1(a). Such secondary roads allocation shall be made in accordance with the provisions of G.S. 136-44.5. (1981, c. 690, s. 6.)

§ 136-44.2B. 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; 1981, c. 690, s. 5.)

Editor's Note. — Session Laws 1981, c. 690, § 136-44.2A was recodified by Session Laws s. 36, makes this section effective July 1, 1981. 1981, c. 690, s. 5, as § 136-44.2B.
The section originally codified as

§ 136-44.4. Annual construction program; State primary and urban systems.

CASE NOTES

Stated in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina* Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 136-44.8. Submission of secondary roads construction programs to the Boards of County Commissioners.

(a) The Department of Transportation shall post in the county courthouse a county map showing tentative secondary road paving projects rated according to the priority of each project in accordance with the criteria and standards adopted by the Board of Transportation. The map shall be posted at least two weeks prior to the public meeting of the county commissioners at which the Department of Transportation representatives are to meet and discuss the proposed secondary road construction program for the county as provided in subsection (c).

(b) The Department of Transportation shall provide a notice to the public of the public meeting of the board of county commissioners at which the annual secondary road construction program for the county proposed by the Department is to be presented to the board and other citizens of the county as provided in subsection (c). The notice shall be published in a newspaper published in the county or having a general circulation in the county once a week for two succeeding weeks prior to the meeting. The notice shall also advise that a county map is posted in the courthouse showing tentative secondary road paving projects rated according to the priority of each project.

(c) Representatives of the Department of Transportation shall meet with the board of county commissioners at a regular or special public meeting of the board of county commissioners for each county and present to and discuss with the board of county commissioners and other citizens present, the proposed secondary road construction program for the county. The presentation and discussion shall specifically include the priority rating of each tentative secondary road paving project included in the proposed construction program, according to the criteria and standards adopted by the Board of Transportation.

At the same meeting after the presentation and discussion of the annual secondary road construction program for the county or at a later meeting, the board of county commissioners may (i) concur in the construction program as proposed, or (ii) take no action, or (iii) make recommendations for deviations in the proposed construction program, except as to paving projects and the priority of paving projects for which the board in order to make recommendations for deviations, must vote to consider the matter at a later public meeting as provided in subsection (d).

(d) The board of county commissioners may recommend deviations in the paving projects and the priority of paving projects included in the proposed secondary road construction program only at a public meeting after notice to the public that the board will consider making recommendations for deviations

in paving projects and the priority of paving projects included in the proposed annual secondary road construction program. Notice of the public meeting shall be published by the board of county commissioners in a newspaper published in the county or having a general circulation in the county. After discussion by the members of the board of county commissioners and comments and information presented by other citizens of the county, the board of county commissioners may recommend deviations in the paving projects and in the paving priority of secondary road projects included in the proposed secondary road construction program. Any recommendation made by the board of county commissioners for a deviation in the paving projects or in the priority for paving projects in the proposed secondary road construction program shall state the specific reason for each such deviation recommended.

(e) The Board of Transportation shall adopt the annual secondary construction program for each county after having given the board of county commissioners of each county an opportunity to review the proposed construction program and to make recommendations as provided in this section. The Board of Transportation shall consider 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. However, no consideration shall be given to any recommendation by the board of county commissioners for a deviation in the paving projects or in the priority for paving secondary road projects in the proposed construction program that is not made in accordance with subsection (d).

(f) The secondary road construction program adopted by the Board of Transportation shall be followed by the Department of Transportation unless changes are approved by the Board of Transportation and notice of any changes is given the board of county commissioners. The Department of Transportation shall post a copy of the adopted program, including a map showing the secondary road paving projects rated according to the approved priority of each project, at the courthouse, within 10 days of its adoption by the Board of Transportation. 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 secondary road construction programs adopted shall be submitted to any member of the General Assembly. The Department of Transportation shall make the annual construction program for 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; 1981, c. 536.)

Effect of Amendments. — The 1981 amendment rewrote this section.

§ 136-44.11. Right-of-way acquisitions; preliminary engineering annual report.

(a) 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.

(b) Requests to the Board of Transportation for allocation of funds for the purchase of right-of-way shall include an estimated time schedule to complete all necessary right-of-way purchases related to a specific project, and a proposed date to award construction contracts for that project. If the anticipated construction contract date is more than two years beyond the estimated completion of the related right-of-way purchases, the approval of both the Board of Transportation and the Director of the Budget is required. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1981, c. 859, s. 69.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, designated the former provisions of this section as subsection (a), and added subsection (b).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

ARTICLE 2B.

Public Transportation.

§ 136-44.21. Ridesharing arrangement defined.

Ridesharing arrangement means the transportation of persons in a motor vehicle where such transportation is incidental to another purpose of the driver and is not operated or provided for profit. The term shall include ridesharing arrangements such as carpools, vanpools and buspools. (1981, c. 606, s. 1.)

§ 136-44.22. Workers' Compensation Act does not apply to ridesharing arrangements.

Chapter 97 of the General Statutes shall not apply to a person injured while participating in a ridesharing arrangement between his or her place of residence and a place of employment or termini near such place, provided that if the employer owns, leases or contracts for the motor vehicle used in such an arrangement, Chapter 97 of the General Statutes shall apply. (1981, c. 606, s. 1.)

§ 136-44.23. Ridesharing arrangement benefits are not income.

Any benefits, other than salary or wages, received by a driver or a passenger while in a ridesharing arrangement shall not constitute income for the purposes of Article 4 of Chapter 105 of the General Statutes. (1981, c. 606, s. 1.)

§ 136-44.24. Ridesharing arrangements exempt from municipal licenses and taxes.

No county, city, town or other municipal corporation may require a business license for a ridesharing arrangement, nor may they require any additional tax, fee, or registration on a vehicle used in a ridesharing arrangement. (1981, c. 606, s. 1.)

§ 136-44.25. Wage and Hour Act inapplicable to ridesharing arrangements.

The provisions of Article 2A of Chapter 95 of the General Statutes of North Carolina shall not apply to an employee while participating in any ridesharing arrangement as defined in G.S. 136-44.21, as provided in G.S. 95-25.14(b) (6). (1981, c. 606, s. 1; c. 663, s. 14.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, substituted "G.S. 95-25.14(b)(6)" for "G.S. 95-25.14(b)(5)."

§ 136-44.26. Use of public motor vehicles for ridesharing.

Motor vehicles owned or operated by any State or local agency may be used in ridesharing arrangements for public employees, provided the public employees benefiting from said ridesharing arrangements shall pay fees which shall cover all capital operating costs of the ridesharing arrangements. (1981, c. 606, s. 1.)

§§ 136-44.27 to 136-44.29: Reserved for future codification purposes.

ARTICLE 3.

State Highway System.

Part 1. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways.

CASE NOTES

Quoted in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp.*, 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Part 3. Power to Make Changes in Highway System.

§ 136-59. No court action against Board of Transportation.

CASE NOTES

Two Well-Established Exceptions. — Review of decision of the State Board of Transportation as to the location of an interstate highway may be sought under two well-established exceptions to the doctrine of sovereign immunity, which would by necessity also be exceptions to this section: (1) when public officers whose duty it is to supervise and direct a state agency attempt to enforce an invalid ordinance or regulation, or invade or

threaten to invade the personal or property rights of a citizen in disregard to law; and (2) where plaintiffs have asserted their status as taxpayers and are trying to prevent the expenditure of money unauthorized by statute or in disregard to law. *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp.*, 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 136-62. Right of petition.

CASE NOTES

Quoted in Orange County Sensible Hwys. & Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d
Protected Environments, Inc. v. North Carolina 890 (1980).

ARTICLE 3A.

*Streets and Highways in and around Municipalities.***§ 136-66.1. Responsibility for streets inside municipalities.**

CASE NOTES

Stated in General Greene Inv. Co. v. Greene,
48 N.C. App. 29, 268 S.E.2d 810 (1980).

ARTICLE 4.

*Neighborhood Roads, Cartways, Church Roads, etc.***§ 136-69. Cartways, tramways, etc., laid out; procedure.**

If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section (G.S. 136-38), and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than 18 feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced

in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P. R.; 1822, c. 1139, s. 1, P. R.; R. C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903, c. 102; Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1; c. 282, s. 1; C. S., s. 3836; 1921, c. 135; Ex. Sess. 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1; 1961, c. 71; 1965, c. 414, s. 1; 1981, c. 826, s. 1.)

Effect of Amendments. — The 1981 amendment inserted "other than a navigable waterway" near the middle of the first sentence of the first paragraph.

ARTICLE 5.

Bridges.

§ 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. Provided, that the provisions of this subsection shall not apply to any bridge which has not been removed and replaced by June 30, 1980; these bridges shall continue to be included in the State Highway System, and shall be examined, repaired if necessary, updated and put into usable condition with weight limitations as safety may require.

(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; 1981, c. 861.)

Effect of Amendments. — The 1981 amendment added the proviso at the end of subsection (a).

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.49. Definitions.

CASE NOTES

"Frontage Road." — Plaintiffs' action to enjoin the taking of their property for the building of an access road from old U.S. 29 to the property of a third party was

upheld since the disputed access road, located as it was in an area remote from and not connecting to or entering at any point on U.S. 29, did not serve to facilitate access by the public or by the third party to U.S. 29, did not meet the statutory definition of a "frontage road" as that

term is used in Article 6D of this Chapter, was not necessary to provide access because all other access had been denied, and was intended to serve a private and not public purpose. *Pelham Realty Corp. v. Board of Transp.*, 50 N.C. App. 106, 272 S.E.2d 777 (1980).

§ 136-89.52. Acquisition of property and property rights.

CASE NOTES

Cited in Pelham Realty Corp. v. Board of Transp., 50 N.C. App. 106, 272 S.E.2d 777 (1980).

§ 136-89.55. Local service roads.

CASE NOTES

Cited in Pelham Realty Corp. v. Board of Transp., 50 N.C. App. 106, 272 S.E.2d 777 (1980).

§ 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.

The location of fuel and other service facilities may be indicated to the users of the controlled access facilities by appropriate logos placed on signs owned, controlled, and erected by the Department of Transportation. The owners, operators or lessees of fuel and other service facilities who wish to place a logo identifying their business or service on a sign shall furnish a logo meeting the size, style and specifications determined by the Department of Transportation and shall pay the Department for the costs of initial installation and subsequent maintenance. The Board of Transportation shall have the authority to set an annual fee not less than the estimated cost of installation and maintenance. (1957, c. 993, s. 9; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1981, c. 481, s. 1.)

Effect of Amendments. — The 1981 amendment added the second paragraph.

Session Laws 1981, c. 481, s. 2, provided that

the act shall become effective at such time as sufficient money shall be appropriated, but in no event until July 1, 1981.

§ 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. The applicant must be a nonprofit organization showing a record of concern for automotive, highway, or driver safety.
- (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.
- (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; 1981, c. 545, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment added the third sentence of subdivision (1) and deleted "and solicitation of contributions,

donations, etc., shall not be permitted" at the end of subdivision (4).

ARTICLE 7.

Miscellaneous Provisions.

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

CASE NOTES

Use by Public Prevents Withdrawal. —

In accord with 1st paragraph in original. See *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

Declaration of Withdrawal Must Be Filed. —

Land may not be withdrawn from dedication

until the fee owners record in the register's office a declaration withdrawing such land from the use to which it has been dedicated. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

Cited in *Emanuelson v. Gibbs*, 49 N.C. App. 417, — S.E.2d — (1980).

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

Cross References. —

As to contents and requirements of county subdivision control ordinance, see § 153A-331.

As to contents and requirements of city subdivision control ordinance, see § 160A-371.

ARTICLE 9.

Condemnation.

§ 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. Provided that when the procedures of Article 9 of Chapter 136 are employed by the Department of Administration, any person named in or served with a complaint and declaration of taking shall have 120 days from the date of service thereof within which to file an answer. (1959, c. 1025, s. 2; 1973, c. 507, s. 5; 1975, c. 625; 1981, c. 245, s. 2.)

Effect of Amendments. — The 1981 amendment added the second proviso.

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.

CASE NOTES

Relative Liabilities of Department and Contractor For Damages From Blasting Operations. — Because of the inherently dangerous or ultrahazardous nature of blasting, when a contractor employed by the Department of Transportation uses explosives in the performance of his work, he is primarily and strictly liable for any damages proximately resulting therefrom. *Cody v. North Carolina Dep't of Transp.*, 45 N.C. App. 471, 263 S.E.2d 334 (1980).

A contractor employed by the Department of Transportation cannot be held liable to a property owner for damages resulting from the work done with proper skill and care. The owner's remedy is against the Department of Transportation on the theory of condemnation. *Cody v. North Carolina Dep't of Transp.*, 45 N.C. App. 471, 263 S.E.2d 334 (1980).

An agreement between the Department of Transportation and a contractor that the contractor would indemnify the Department of Transportation for any claims arising out of the performance of a highway reconstruction contract, including any claims caused by the contractor's blasting operations, did not affect plaintiff's right to sue the Department of Transportation or the contractor or both for loss of a building on their property allegedly caused by the contractor's blasting operations. *Cody v. North Carolina Dep't of Transp.*, 45 N.C. App. 471, 263 S.E.2d 334 (1980).

Cited in *Department of Transp. v. Winston Container Co.*, 45 N.C. App. 638, 263 S.E.2d 830 (1980); *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 136-112. Measure of damages.

Legal Periodicals. — For survey of 1979 property law, see 58 N.C.L. Rev. 1509 (1980).

CASE NOTES

Valid Traffic Regulations Not Amounting to Compensable Taking. — The enactment of valid traffic regulations which change traffic patterns and cause circuity of travel but do not foreclose reasonable access to the roadway from abutting property are proper exercises of the police power for which no compensation need be made by the State or its agencies. *Board of Transp. v. Terminal Whse. Corp.*, 300 N.C. 700, 268 S.E.2d 180 (1980).

The dead-ending and reclassification of the roadway on which property abutted are valid traffic regulations for which no compensation is ordinarily required. *Board of Transp. v. Terminal Whse. Corp.*, 300 N.C. 700, 268 S.E.2d 180 (1980).

Noncompensable injuries to property values resulting from enactment of valid traffic regulations do not become compensable merely because some property was coincidentally taken in connection with project which put the regulations into effect.

Board of Transp. v. Terminal Whse. Corp., 300 N.C. 700, 268 S.E.2d 180 (1980).

Reasonable use rule, pursuant to which possessor of land incurs liability for interference with flow of surface waters only when such interference is unreasonable and causes substantial damage, governs disposal of surface waters among private parties and has no application in condemnation proceedings, since the principle of reasonable use is superseded by the constitutional mandate that just compensation must be paid when private property is taken for public use. *Board of Transp. v. Terminal Whse. Corp.*, 300 N.C. 700, 268 S.E.2d 180 (1980).

Whether expert testifying from personal knowledge must first relate underlying facts before giving his opinion is matter left to sound discretion of trial judge. *Board of Transp. v. Terminal Whse. Corp.*, 300 N.C. 700, 268 S.E.2d 180 (1980).

§ 136-117. Payment of compensation.

CASE NOTES

Section is directed at adverse and conflicting claims to a specific sum. *State Hwy.*

Comm'n v. Cape, 49 N.C. App. 137, 270 S.E.2d 555 (1980).

§ 136-119. Costs and appeal.

CASE NOTES

Litigation expenses and costs incurred by landowner in condemnation proceeding do not constitute part of the "just compensation" required to be paid by the Fifth Amendment and may be taxed as part of the costs only if authorized by statute. *Department of Transp. v. Winston Container Co.*, 45 N.C. App. 638, 263 S.E.2d 830 (1980).

When Reimbursement For Attorney, Appraisal and Engineering Fees Autho-

ized. — This section authorizes the court having jurisdiction of a condemnation action instituted by the Department of Transportation to award the landowner reimbursement for reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings only if: (1) "the final judgment is that the Department of Transportation cannot acquire real property by condemnation"; or (2) "the proceeding is abandoned by the

Department of Transportation"; or (3) judgment is rendered for the plaintiff in an inverse condemnation proceeding brought under § 136-111. *Department of Transp. v. Winston Container Co.*, 45 N.C. App. 638, 263 S.E.2d 830 (1980).

No "Final Judgment". — A judgment entered by the trial court dismissing a condemnation action brought by the Department of Transportation because the court was of the opinion that it lacked jurisdiction for the reason that the resolution of the State Board of Trans-

portation authorizing condemnation of defendant's property was insufficient did not constitute a final judgment that the Department of Transportation cannot acquire defendant's real property by condemnation within the purview of this section, and this statute did not authorize the trial court to award defendant reimbursement for attorney, appraisal and engineering fees incurred because of the condemnation proceeding. *Department of Transp. v. Winston Container Co.*, 45 N.C. App. 638, 263 S.E.2d 830 (1980).

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Nature of Administrative Appeal to Secretary of Transportation. — There was no provision within the Outdoor Advertising Control Act or the administrative regulations published pursuant to the act which required or provided for anything other than a written administrative appeal to the Secretary of Transportation, and there is no provision for an administrative hearing by the secretary. *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied, 301 N.C. 400, 273 S.E.2d 446 (1980).

Administrative Procedure Act does not

apply to Outdoor Advertising Control Act or regulations published pursuant to the act because there was no statute or administrative rule which required the Department of Transportation to make an agency decision after providing an opportunity for an adjudicatory hearing, and the subject controversy was therefore not a contested case within the meaning of § 150A-23. *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied, 301 N.C. 400, 273 S.E.2d 446 (1980).

§ 136-127. Declaration of policy.

CASE NOTES

Police power may be broad enough to include reasonable regulation of property use for aesthetic reasons only. *County of Cumberland v. Eastern Fed. Corp.*, 48 N.C.

App. 518, 269 S.E.2d 672, cert. denied, — N.C. —, 273 S.E.2d 453 (1980).

Applied in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 136-128. Definitions.

CASE NOTES

Applied in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 136-130. Regulation of advertising.**CASE NOTES**

Stated in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 136-131. Removal of existing nonconforming advertising.**CASE NOTES**

Stated in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 136-132. Condemnation procedure.**CASE NOTES**

Stated in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 136-133. Permits required.**CASE NOTES**

Stated in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 136-134. Illegal advertising.**CASE NOTES**

Stated in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 136-134.1. Judicial review.**CASE NOTES**

This section preempts § 150A-43 and specifically provides opportunity to have de novo proceeding before trial judge which satisfies due process requirements.

National Adv. Co. v. Bradshaw, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied, 301 N.C. 400, 273 S.E.2d 446 (1980).

§ 136-140. Availability of federal aid funds.**CASE NOTES**

Cited in *National Adv. Co. v. Bradshaw*, 48
N.C. App. 10, 268 S.E.2d 816 (1980).

STATE OF NORTH CAROLINA**DEPARTMENT OF JUSTICE**

Raleigh, North Carolina

October 15, 1981

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1981 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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