General Statutes of North Carolina

Annotated

2000 INTERIM SUPPLEMENT

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GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

2000 INTERIM SUPPLEMENT

Volume 2

Chapters 87 to 168A
NC Constitution
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Tables

CONTAINING GENERAL LAWS OF NORTH CAROLINA
ENACTED BY THE GENERAL ASSEMBLY

Prepared under the Supervision of
THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA
by
The Editorial Staff of the Publishers
under the Direction of
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Preface

This Volume contains the general laws of a permanent nature enacted by the General Assembly at the 2000 Extra Session and the 2000 Regular Session, which are within Chapters 2000-1 through 2000-191, and brings to date the annotations included therein. Also included are the general laws of a permanent nature enacted at the 1999 Extra Session held on December 15 and 16, 1999, which are within Chapter 1999-463, and which were first published in the 2000 Special Supplement.

A majority of the Session Laws are made effective upon becoming law, 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 60 days after the adjournment of the session" in which passed.

For detailed research on any subject, both within this volume and the General Statutes as a whole, see the General Index to the General Statutes.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, selected opinions which construe a specific statute are cited in the annotations 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.

This recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any suggestions they may have for improving the General Statutes to the Department, or to LEXIS Publishing, Charlottesville, Virginia.

Michael F. Easley
Attorney General

Scope of Volume

Statutes:

Permanent portions of the general laws enacted by the General Assembly at the 2000 Extra Session and the 2000 Regular Session, which are within Chapters 2000-1 through 2000-191. Also included are permanent portions of the general laws enacted at the 1999 Extra Session held on December 15 and 16, 1999, which are within Chapter 1999-463, and which were first published in the 2000 Special Supplement.

Annotations:

To better serve our customers, by making our annotations more current, LEXIS Publishing has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of the more current reading of cases, as they are posted online on LEXIS, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the North Carolina Supreme Court posted on LEXIS as of July 11, 2000, decisions of the North Carolina Court of Appeals posted as of July 11, 2000, and decisions of the appropriate federal courts posted as of July 11, 2000. These cases will be printed in the following reports:

South Eastern Reporter 2nd Series
Federal Reporter 3rd Series
Federal Supplement 2nd Series
Federal Rules Decisions
Bankruptcy Reports
Supreme Court Reporter

Additionally, annotations have been taken from the following sources:

North Carolina Law Review through Volume 78, no. 5, p. 1704
Wake Forest law Review through Volume 35, no. 2, p. 508
Campbell law Review through Volume 22, no. 1, p. 251
Duke Law Review through Volume 49, no. 2, p. 599
North Carolina Central Law Journal through Volume 22, no. 1, p. 100
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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1 of the 1999 Replacement Code. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P.R. .... Potter's Revisal (1821, 1827)
R.S. .... Revised Statutes (1837)
R.C. .... Revised Code (1854)
C.C.P. .... Code of Civil Procedure (1868)
Code .... Code (1883)
Rev. .... Revisal of 1905
C.S. .... Consolidated Statutes (1919, 1924)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October, 2000

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 2000 Interim Supplement to the General Statutes of North Carolina was prepared and published by LEXIS Publishing under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY
Attorney General of North Carolina

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§ 89C-10. Board powers.

OPINIONS OF ATTORNEY GENERAL

The Board is vested with jurisdiction over State officials and employees who are registered professional engineers in the performance of their assigned duties, to the extent that those duties fall within the practice of engineering. See opinion of Attorney General to Mr. Jerry T. Carter, Executive Secretary, North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 1998 N.C.A.G. 8 (2/11/98).

§ 89C-12. Records and reports of Board; evidence.

The Board shall keep a record of its proceedings and a register of all applicants for licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of licensure granted, and the date licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded by the Board, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all licensed professional engineers and all licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each year. The roster shall be printed by the Board out of the Board's fund and distributed as described in the Board's rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of the report, together with a complete statement of the receipts and expenditures of the Board attested by the chair and the secretary and a copy of the roster of licensed professional engineers and professional land surveyors. (1921, c. 1, s. 8; C.S., s. 6055(i); 1951, c. 1084, s. 1; 1975, c. 681, s. 1; 1998-118, s. 10; 2000-140, s. 18.)

Effect of Amendments. —
Session Laws 2000-140, s. 18, effective July 21, 2000, deleted a duplicate "the" preceding the phrase "the roster of licensed professional engineers" near the end of the section.

§ 89C-14. Application for licensure; license fees.

(a) Application for licensure as a professional engineer or professional land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for licensure who is required to take the written examination shall pay to the Board an application fee not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board but shall not exceed one hundred dollars ($100.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of licensure of a corporation is the amount set by the Board but shall not exceed seventy-five dollars ($75.00). The fee for renewal of a certificate of licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee and documented evidence of actions taken by the candidate to enhance the candidate's prospects for passing the exam. A candidate with a combination of three failures or unexcused absences may only be considered by the Board for reexamination at the end of 12 months following the third failure or unexcused absence. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year. (1921, c. 1, s. 9; C.S., s. 6055(j); 1951, c. 1084, s. 1; 1953, c. 999, s. 2; 1957, c. 1060, ss. 2, 3; 1975, c. 681, s. 1; 1981, c. 230; 1983, c. 183, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 671, s. 5; 1996, 2nd Ex. Sess., c. 18, s. 7.10(k); 1998-118, s. 12; 2000-115, s. 1.)

Effect of Amendments. —
Session Laws 2000-115, s. 1, effective July 14, 2000, substituted the language beginning "fee and documented evidence" and ending "following the third failure or unexcused absence" for "fee, and be considered by the Board for reexamination at the end of 12 months" in the second paragraph in subsection (e).

§ 89C-17. Expirations and renewals of certificates.

Certificates for licensure of corporations and business firms that engage in the practice of engineering or land surveying shall expire on the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. All other certificates for licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require any evidence necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person licensed under this Chapter of the date of expiration of the certificate, the amount of the fee required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month immediately following the month of expiration, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed seventy-five dollars ($75.00). Failure on the part of any registrant to renew the certificate annually in the month immediately following the month of expiration, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first 12 months immediately following its invalidation by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a licensee to renew the license for a period of 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application on the prescribed form, and to meet all other requirements for licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all licensees who have not effected their renewal by the first day of the month immediately following the renewal period. The Board may adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that the applicant has maintained active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement. (1921, c. 1, s. 9; C.S., s. 6055(k); 1951, c. 1084, s. 1; 1953, c. 1041, s. 9; 1957, c. 1060, s. 4; 1973, c. 1321; c. 1331, s. 3; 1975, c. 681, s. 1; 1979, c. 819, ss. 3, 4; 1985, c. 373; 1998-118, s. 15; 2000-115, s. 2.)

Effect of Amendments. —
Session Laws 2000-115, s. 2, effective July 14, 2000, inserted the present first sentence; substituted "All other certificates" for "Certificates" in the second sentence; near the middle of the section, substituted "immediately following the month of expiration" for "of January immediately following" and for "of January"; and substituted "the month immediately following the renewal period" for "February immediately following the date of their expiration."

§ 89C-24. Licensure of corporations and business firms that engage in the practice of engineering or land surveying.

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is licensed by the Board and has paid an application fee established by the Board in an amount not to exceed one hundred dollars ($100.00). A corporation or business firm is subject to the same duties and responsibilities as an individual licensee. Licensure of a corporation or business firm does not affect the requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities. The Board may adopt rules regulating the operation of offices and places of business of corporations and business firms licensed under this section to ensure that professional engineering and land surveying services are performed under the supervision of licensed professional engineers and land surveyors.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter. (1921, c. 1, s. 14; C.S., s. 6055(p); 1951, c. 1084, s. 1; 1969, c. 718, s. 18; 1975, c. 681, s. 1; 1993 (Reg. Sess., 1994), c. 671, s. 4; 1998-118, s. 22; 2000-115, s. 3.)

Effect of Amendments. —
Session Laws 2000-115, s. 3, effective July 14, 2000, added the last sentence in the first paragraph.

Chapter 89E.

Geologists Licensing Act.

§ 89E-6. Exemptions.

OPINIONS OF ATTORNEY GENERAL

Violations of Code of Professional Conduct. — The North Carolina Board for Licensing of Geologists has the authority to investigate written charges that a geologist, licensed in North Carolina, has violated the Code of Professional Conduct; after such investigation, the Board may refuse to grant or renew, or may suspend or may revoke the license of any geologist licensed under the Act who has violated the Code, including a State official or employee performing his or her assigned duties. However, a State official or employee who loses his license for violations of the Code is still exempt from the provisions of the Act, and thus would not be prevented from practicing geology for the State without a license should the agency decide to retain him. See opinion of Attorney General to Mr. Robert Upton, Board Administrator, North Carolina Board for Licensing of Geologists, 1998 N.C.A.G. 17 (3/19/98).

§ 89E-19. Disciplinary procedures.

OPINIONS OF ATTORNEY GENERAL

Violations of Code of Professional Conduct. — The North Carolina Board for Licensing of Geologists has the authority to investigate written charges that a geologist, licensed in North Carolina, has violated the Code of Professional Conduct; after such investigation, the Board may refuse to grant or renew, or may suspend or may revoke the license of any geologist licensed under the Act who has violated the Code, including a State official or employee performing his or her assigned duties. However, a State official or employee who loses his license for violations of the Code is still exempt from the provisions of the Act, and thus would not be prevented from practicing geology for the State without a license should the agency decide to retain him. See opinion of Attorney General to Mr. Robert Upton, Board Administrator, North Carolina Board for Licensing of Geologists, 1998 N.C.A.G. 17 (3/19/98).

Chapter 89F.

North Carolina Soil Scientist Licensing Act.

§ 89F-6. Corporate, limited liability company, partnership, or sole proprietorship practice of soil science.

A corporation organized under Chapter 55B of the General Statutes, a limited liability company organized under Chapter 57C of the General Statutes, a partnership, or a sole proprietorship may engage in the practice of soil science in this State. A licensed soil scientist shall be in responsible charge of all practice of soil science by the corporation, limited liability company, partnership, or sole proprietorship. (1995, c. 414, s. 1; 2000-115, s. 7.)

Effect of Amendments. — Session Laws 2000-115, s. 7, effective July 14, 2000, inserted "limited liability company" in the section heading, inserted "a limited liability company organized under Chapter 57C of the General Statutes" in the first sentence and inserted "limited liability company" in the second sentence.

Chapter 90.

Medicine and Allied Occupations.

ARTICLE 1.

Practice of Medicine.

§ 90-12. Limited license; limited volunteer license.

(a) The Board may, whenever in its opinion the conditions of the locality where the applicant resides are such as to render it advisable, make any modifications of the requirements of G.S. 90-9, 90-10, and 90-11 as in its judgment the interests of the people living in that locality may demand, and may issue to the applicant a special license, to be entitled a "Limited License," authorizing the holder of the limited license to practice medicine and surgery within the limits only of the districts specifically described therein. A resident's training license shall expire at the time its holder ceases to be a resident in the training program or obtains any other license to practice medicine issued by the Board. The holder of the limited license practicing medicine or surgery beyond the boundaries of the districts as laid down in said license shall be guilty of a Class 3 misdemeanor, and upon conviction shall only be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for each and every offense; and the Board may revoke the limited license, in its discretion, after due notice.

(b) As used in subsection (a) of this section:

(1) "Limited license" includes a resident's training license.

(2) "Resident training license" means a license to practice in a medical education and training program, approved by the Board, for the purpose of education or training.

(c) The Board shall issue to an applicant a special license to be entitled a "Limited Volunteer License," authorizing the holder of the limited license to practice medicine and surgery only at clinics which specialize in the treatment of indigent patients. The holder of a limited license issued pursuant to this subsection may not receive compensation for services rendered at clinics specializing in the care of indigent patients. The Board shall issue a limited license under this subsection to an applicant who:

(1) Has a license to practice medicine and surgery in another state;

(2) Produces a letter from the state of licensure indicating the applicant is in good standing; and

(3) Is authorized to treat personnel enlisted in the United States armed services or veterans.

The Board shall issue a limited license under this subsection within 30 days after an applicant provides the Board with information satisfying the requirements of this subsection.

The holder of a limited license issued pursuant to this subsection who practices medicine or surgery at places other than clinics which specialize in the treatment of indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall only be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for each and every offense; and the Board may revoke the limited license, in its discretion, after due notice.

(d) The Board may issue a "Limited Volunteer License" as authorized in subsection (c) of this section to an applicant who is a retired physician and has allowed his or her license to practice medicine and surgery in this State or another state to become inactive. Physicians holding a "Limited Volunteer License" under this subsection shall comply with the continuing medical education requirements adopted by the Board. (1909, c. 218, s. 1; C.S., s. 6616; 1967, c. 691, s. 42; 1981, c. 573, s. 8; 1993, c. 539, s. 614; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 405, s. 3; 1995 (Reg. Sess., 1996), c. 634, s. 2; 2000-5, s. 1.)

Effect of Amendments. — Session Laws 2000-5, s. 1, effective June 6, 2000, added subsection (d).

§ 90-14. Revocation, suspension, annulment or denial of license.

(a) The Board shall have the power to deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

(1) Immoral or dishonorable conduct.
(2) Producing or attempting to produce an abortion contrary to law.
(3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with an application for a license.
(4) Repealed by Session Laws 1977, c. 838, s. 3.
(5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians designated by the Board before or after charges may be presented against the physician, and the results of the examination shall be admissible in evidence in a hearing before the Board.
(6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.
(7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.
(8) By false representations has obtained or attempted to obtain practice, money or anything of value.
(9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which the physician has been educated.
(10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.

(11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating the physician's failure to properly treat a patient. The Board may, upon reasonable grounds, require a physician to submit to inquiries or examinations, written or oral, by members of the Board or by other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee.

(12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient, and upon a finding of the exploitation, the Board may order restitution be made to the payer of the bill, whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record.

(13) Having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against or having a license to practice medicine denied by the licensing authority of any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice medicine voluntarily relinquished by a physician or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the physician's license, is an action against a license to practice medicine.

(14) The failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.

(15) The failure to complete an amount not to exceed 150 hours of continuing medical education during any three consecutive calendar years pursuant to rules adopted by the Board.

For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant or revoke a license issued to a physician, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of the physician's practice as the Board deems advisable. The Board may, in its discretion and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked or rescinded, except that no license that has been revoked shall be restored for a period of two years following the date of revocation.

(b) The Board shall refer to the State Medical Society Physician Health and Effectiveness Committee all physicians whose health and effectiveness have been significantly impaired by alcohol, drug addiction or mental illness.

(c) A felony conviction shall result in the automatic revocation of a license issued by the Board, unless the Board orders otherwise or receives a request for a hearing from the person within 60 days of receiving notice from the Board, after the conviction, of the provisions of this subsection. If the Board receives a timely request for a hearing in such a case, the provisions of G.S. 90-14.2 shall be followed.

(d) The Board and its members and staff may release confidential or nonpublic information to any health care licensure board in this State or another state about the issuance, denial, annulment, suspension, or revocation of a license, or the voluntary surrender of a license by a Board-licensed physician, including the reasons for the action, or an investigative report made by the Board. The Board shall notify the physician within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the physician. If the physician requests, in writing, within 30 days after being notified that such information has been transmitted, he shall be furnished a copy of all information so transmitted. The notice or copies of the information shall not be provided if the information relates to an ongoing criminal investigation by any law-enforcement agency, or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities.

(e) The Board and its members and staff shall not be held liable in any civil or criminal proceeding for exercising, in good faith, the powers and duties authorized by law.

(f) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting or investigating the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice medicine and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice medicine, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice. (C.S., s. 6618; 1921, c. 47, s. 4; Ex. Sess. 1921, c. 44, s. 6; 1933, c. 32; 1953, c. 1248, s. 2; 1969, c. 612, s. 4; c. 929, s. 6; 1975, c. 690, s. 4; 1977, c. 838, s. 3; 1981, c. 573, ss. 9, 10; 1987, c. 859, ss. 6-10; 1993, c. 241, s. 1; 1995, c. 405, s. 4; 1997-443, s. 11A.118(a); 1997-481, s. 1; 2000-184, s. 5.)

Effect of Amendments. — Session Laws 2000-184, s. 5, effective August 2, 2000, added subsection (f).

§ 90-15. License fee; salaries, fees, and expenses of Board.

Each applicant for a license by examination shall pay to the North Carolina Medical Board a fee which shall be prescribed by the Board in an amount not exceeding the sum of four hundred dollars ($400.00) plus the cost of test materials before being admitted to the examination. Whenever a license is granted without examination, as authorized in G.S. 90-13, the applicant shall pay to the Board a fee in an amount to be prescribed by the Board not in excess of two hundred fifty dollars ($250.00). Whenever a limited license is granted as provided in G.S. 90-12, the applicant shall pay to the Board a fee not to exceed one hundred fifty dollars ($150.00), except where a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training is granted, the applicant shall pay a fee of twenty-five dollars ($25.00), and where a limited license to practice medicine and surgery only at clinics that specialize in the treatment of indigent patients is granted, the applicant shall not pay a fee. A fee of twenty-five dollars ($25.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the North Carolina Medical Board, to be held in a fund for the use of the Board. The compensation and expenses of the members and officers of the Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of the fund, upon the warrant of the Board. The per diem compensation of Board members shall not exceed two hundred dollars ($200.00) per day per member for time spent in the performance and discharge of duties as a member. Any unexpended sum or sums of money remaining in the treasury of the Board at the expiration of the terms of office of the members of the Board shall be paid over to their successors in office.

For the initial and annual registration of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount. (1858-9, c. 258, s. 13; Code, s. 3130; Rev., s. 4501; 1913, c. 20, ss. 4, 5; C.S., s. 6619; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 7; 1953, c. 187; 1969, c. 929, s. 4; 1971, c. 817, s. 2; c. 1150, s. 5; 1977, c. 838, s. 4; 1979, c. 196, s. 1; 1981, c. 573, s. 15; 1983 (Reg. Sess., 1984), c. 1063, s. 1; 1985, c. 362, ss. 1-3; 1987, c. 859, ss. 13, 14; 1993 (Reg. Sess., 1994), c. 566, s. 2; 1995, c. 94, s. 15; c. 509, s. 37; 2000-5, s. 2.)

Effect of Amendments. — Session Laws 2000-5, s. 2, effective June 6, 2000, added "and where a ... pay a fee" to the end of the third sentence in the first paragraph.

§ 90-15.1. Registration every year with Board.

Every person licensed to practice medicine by the North Carolina Medical Board shall register annually with the Board within 30 days of the person's birthday. A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and shall pay a registration fee fixed by the Board not in excess of one hundred dollars ($100.00). A physician who is not actively engaged in the practice of medicine in North Carolina and who does not wish to register the license may direct the Board to place the license on inactive status. For purposes of annual registration, the Board shall use a simplified registration form which allows registrants to confirm information on file with the Board. A physician who fails to register as required by this section shall pay an additional fee of twenty dollars ($20.00) to the Board. The license of any physician who fails to register and who remains unregistered for a period of 30 days after certified notice of the failure is automatically inactive. Except as provided in G.S. 90-12(d), a person whose license is inactive shall not practice medicine in North Carolina nor be required to pay the annual registration fee. Upon payment of all accumulated fees and penalties, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements. The penalty may not exceed the maximum fee for a license under G.S. 90-13. (1957, c. 597; 1969, c. 929, s. 5; 1979, c. 196, s. 2; 1983 (Reg. Sess., 1984), c. 1063, s. 2; 1987, c. 859, s. 12; 1993 (Reg. Sess., 1994), c. 566, s. 1; 1995, c. 94, s. 16; 1995 (Reg. Sess., 1996), c. 634, s. 1(a); 1997-481, s. 3; 2000-5, s. 3.)

Effect of Amendments. — Session Laws 2000-5, s. 3, effective June 6, 2000, added "Except as provided in G.S. 90-12(d)" to the beginning of the seventh sentence.

§ 90-18. Practicing without license; practicing defined; penalties.

(a) No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless the person shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, the person shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a Class 1 misdemeanor.

(b) Any person shall be regarded as practicing medicine or surgery within the meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another person. A person who resides in any state and who, by use of any electronic or other mediums, performs any of the acts described in this subsection shall be regarded as practicing medicine or surgery and shall be subject to the provisions of this Article and appropriate regulation by the North Carolina Medical Board.

(c) The following shall not constitute practicing medicine or surgery as defined in subsection (b) of this section:

(1) The administration of domestic or family remedies in cases of emergency.
(2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.
(3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.
(3a) The provision of drug therapy management by a licensed pharmacist engaged in the practice of pharmacy pursuant to an agreement that is physician, pharmacist, patient, and disease specific when performed in accordance with rules and rules developed by a joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and approved by both Boards. Drug therapy management shall be defined as: (i) the implementation of predetermined drug therapy which includes diagnosis and product selection by the patient's physician; (ii) modification of prescribed drug dosages, dosage forms, and dosage schedules; and (iii) ordering tests; (i), (ii), and (iii) shall be pursuant to an agreement that is physician, pharmacist, patient, and disease specific.
(4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.
(5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.
(6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.
(7) The practice of midwifery as defined in G.S. 90-178.2.
(8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.
(9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.
(10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.
(11) The practice of medicine or surgery by any nonregistered reputable physician or surgeon who comes into this State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.
(12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning

of this Article. "Radiology" shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of X ray. Any person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of X rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of X rays; or who treats any disease or condition of the human body by the application of X rays or radium. Nothing in this subdivision shall prevent the practice of radiology by any person licensed under the provisions of Articles 2, 7, 8, and 12A of this Chapter.

(13) The performance of any medical acts, tasks, and functions by a licensed physician assistant at the direction or under the supervision of a physician in accordance with rules adopted by the Board. This subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks, and functions that are otherwise permitted by law or established by custom. The Board shall authorize physician assistants licensed in this State or another state to perform specific medical acts, tasks, and functions during a disaster.

(14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the North Carolina Medical Board and the Board of Nursing and adopted by both boards.

(15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist under the provisions of Article 25 of this Chapter.

(16) The practice of acupuncture by a licensed acupuncturist in accordance with the provisions of Article 30 of this Chapter.

(17) The use of an automated external defibrillator as provided in G.S. 90-21.15. (1858-9, c. 258, s. 2; Code, s. 3122; 1885, c. 117, s. 2; c. 261; 1889, c. 181, ss. 1, 2; Rev., ss. 3645, 4502; C.S., s. 6622; 1921, c. 47, s. 7; Ex. Sess. 1921, c. 44, s. 8; 1941, c. 163; 1967, c. 263, s. 1; 1969, c. 612, s. 5; c. 929, s. 3; 1971, c. 817, s. 1; c. 1150, s. 6; 1973, c. 92, s. 1; 1983, c. 897, s. 2; 1993, c. 303, s. 2; c. 539, s. 615; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 94, ss. 18, 19; 1997-511, s. 4; 1997-514, s. 1; 1999-290, s. 2; 2000-113, s. 2.)

Effect of Amendments. — Session Laws 2000-113, s. 2, effective October 1, 2000, and applicable to causes of action arising on or after that date, added subdivision (c)(17).

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Nurse. — In case where nurse sufficiently alleged that she was discharged for complying with minimum requirements of the practice of nursing, court disagreed with defendant's argument that her complaint established, as a matter of law, the unauthorized practice of medicine by plaintiff under this section. Deerman v. Beverly Cal. Corp., 135 N.C. App. 1, 518 S.E.2d 804 (1999).

Applied in Formyduval v. Bunn, — N.C.

App. —, 530 S.E.2d 96, 2000 N.C. App. LEXIS 622 (2000).

§ 90-18.1. Limitations on physician assistants.

CASE NOTES

Applied in Whitaker v. Akers, — N.C. App. —, 527 S.E.2d 721, 2000 N.C. App. LEXIS 315 (2000).

§ 90-18.2. Limitations on nurse practitioners.

OPINIONS OF ATTORNEY GENERAL

It is unlawful for certified registered nurse anesthetists (CRNAs) to provide anesthesia care without physician supervision. See opinion of Attorney General to The Honorable James S. Forrester, M.D. North Carolina General Assembly, 1998 N.C.A.G. 58 (12/31/98).

Article 1A.

Treatment of Minors.

Part 2. Parental or Judicial Consent for Abortion.

§ 90-21.7. Parental consent required.

Legal Periodicals. —
For a note on minors' rights vis-a-vis abortion, see 1999 Duke L.J. 297.

§ 90-21.8. Procedure for waiver of parental consent.

(a) The requirements and procedures under Part 2 of this Article are available and apply to unemancipated minors seeking treatment in this State.
(b) The court shall ensure that the minor or her guardian ad litem is given assistance in preparing and filing the petition and shall ensure that the minor's identity is kept confidential.
(c) **(Effective until July 1, 2001)** The minor may participate in proceedings in the court on her own behalf or through a guardian ad litem. The court shall advise her that she has a right to court appointed counsel and shall provide her with counsel upon her request.
(c) **(Effective July 1, 2001)** The minor may participate in proceedings in the court on her own behalf or through a guardian ad litem. The court shall advise her that she has a right to appointed counsel, and counsel shall be provided upon her request in accordance with rules adopted by the Office of Indigent Defense Services.
(d) Court proceedings under this section shall be confidential and shall be given precedence over other pending matters necessary to ensure that the court may reach a decision promptly. In no case shall the court fail to rule within seven days of the time of filing the application. This time limitation may be extended at the request of the minor. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and

understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the parental consent requirement shall be waived.

(e) The parental consent requirement shall be waived if the court finds:

(1) That the minor is mature and well-informed enough to make the abortion decision on her own; or

(2) That it would be in the minor's best interests that parental consent not be required; or

(3) That the minor is a victim of rape or of felonious incest under G.S. 14-178.

(f) The court shall make written findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence be maintained. If the court finds that the minor has been a victim of incest, whether felonious or misdemeanor, it shall advise the Director of the Department of Social Services of its findings for further action pursuant to Article 3 of Chapter 7B of the General Statutes.

(g) If the female petitioner so requests in her petition, no summons or other notice may be served upon the parents, guardian, or custodian of the minor female.

(h) The minor may appeal an order issued in accordance with this section. The appeal shall be a de novo hearing in superior court. The notice of appeal shall be filed within 24 hours from the date of issuance of the district court order. The de novo hearing may be held out of district and out of session and shall be held as soon as possible within seven days of the filing of the notice of appeal. The record of the de novo hearing is a confidential record and shall not be open for general public inspection. The Chief Justice of the North Carolina Supreme Court shall adopt rules necessary to implement this subsection.

(i) No court costs shall be required of any minor who avails herself of the procedures provided by this section. (1995, c. 462, s. 1; 1998-202, s. 13(u); 2000-144, s. 35.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 2001. The second version of subsection (c) set out above is effective July 1, 2001.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Effect of Amendments. —

Session Laws 2000-144, s. 35, effective July 1, 2001, substituted "appointed counsel, and counsel shall be provided upon her request in accordance with rules adopted by the Office of Indigent Defense Services" for "court appointed counsel and shall provide her with counsel upon her request" in subsection (c).

Article 1B.

Medical Malpractice Actions.

§ 90-21.11. Definitions.

CASE NOTES

No Professional Relationship. —

Because the observance and supervision of the plaintiff when she smoked in the designated smoking area did not constitute an occupation involving specialized knowledge or skill, and preventing the patient from dropping a match or a lighted cigarette upon herself while in a designated smoking room did not involve matters of medical science, such behaviors are properly applied to the standards of ordinary negligence, and the requirements of Civil Procedure Rule 9(j), concerning a claim for medical malpractice, did not apply. Taylor v. Vencor, Inc., — N.C. App. —, 525 S.E.2d 201, 2000 N.C. App. LEXIS 62 (2000).

Applied in Brisson v. Kathy A. Santoriello, M.D., P.A., 351 N.C. 589, 528 S.E.2d 568 (2000).

Cited in Formyduval v. Bunn, — N.C. App. —, 530 S.E.2d 96, 2000 N.C. App. LEXIS 622 (2000); Hylton v. Koontz, — N.C. App. —, 530 S.E.2d 108, 2000 N.C. App. LEXIS 629 (2000).

§ 90-21.12. Standard of health care.

CASE NOTES

Testimony as to National Standard. — Expert witness's testimony that, in his opinion, defendant doctor met the highest standard of care found anywhere in the United States met the requirements of this section, although he did not testify that he was familiar with the local standard. Marley v. Graper, 135 N.C. App. 423, 521 S.E.2d 129 (1999).

Specialists May Be Disqualified from Testifying against General Practitioner by Rule 702. — All three of the plaintiff's witnesses were disqualified from testifying against the defendant, a general practitioner, pursuant to this rule, regardless of whether they were more highly qualified, because they were specialists as that term is used in the statute—one was board certified in oncology; another, in emergency medicine and family practice; and the third held himself out as a specialist in emergency medicine; consequently, the defendant's motion for a directed verdict was properly granted. Formyduval v. Bunn, — N.C. App. —, 530 S.E.2d 96, 2000 N.C. App. LEXIS 622 (2000).

Applied in Brisson v. Kathy A. Santoriello, M.D., P.A., 351 N.C. 589, 528 S.E.2d 568 (2000).

§ 90-21.13. Informed consent to health care treatment or procedure.

CASE NOTES

Subdivision (a)(2) establishes an objective standard, etc.

Under subdivision (a)(2), physicians must indicate the status and risk of a procedure but need not inform patients in every instance that a procedure is experimental in nature. Osburn v. Danek Medical, Inc., 135 N.C. App. 234, 520 S.E.2d 88 (1999), cert. denied, 351 N.C. 359, 530 S.E.2d 54 (2000).

Consent As to Experimental Devices. — Contrary to appellant's assertions, the trial court's instructions satisfied the requirements of this section and alerted the jury that evidence of the investigational or experimental status of the devices inserted in his back was properly considered in its resolution of the issue of the defendant's negligence. Osburn v. Danek Medical, Inc., 135 N.C. App. 234, 520 S.E.2d 88 (1999), cert. denied, 351 N.C. 359, 530 S.E.2d 54 (2000).

§ 90-21.14. First aid or emergency treatment; liability limitation.

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center or a volunteer member of a rescue squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

(1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

(2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment.

(a1)(1) Any volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health center,

(2) Any volunteer medical or health care provider rendering services to a patient referred by a local health department as defined in G.S. 130A-2(5) or nonprofit community health center at the provider's place of employment,

(3) Any volunteer medical or health care provider serving as medical director of an emergency medical services (EMS) agency, [or]

(4) Any retired physician holding a "Limited Volunteer License" under G.S. 90-12(d),

who receives no compensation for medical services or other related services rendered at the facility, center, agency, or clinic, or who neither charges nor receives a fee for medical services rendered to the patient referred by a local health department or nonprofit community health center at the provider's place of employment shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of the services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the services. The local health department facility, nonprofit community health center, or agency shall use due care in the selection of volunteer medical or health care providers, and this subsection shall not excuse the health department facility, community health center, or agency for the failure of the volunteer medical or health care provider to use ordinary care in the provision of medical services to its patients.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession. Services provided by a volunteer health care provider who receives no compensation for his services and who renders first aid or emergency treatment to members of athletic teams are deemed not to be in the normal and ordinary course of the volunteer health care provider's business or profession. Services provided by a medical or health care provider who receives no compensation for his services and who voluntarily renders such services at facilities of local health departments as defined in G.S. 130A-2 or at a nonprofit community health center, or as a volunteer medical director of an emergency medical services (EMS) agency, are deemed not to be in the normal and ordinary course of the volunteer medical or health care provider's business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect. (1975, 2nd Sess., c. 977, s. 4; 1985, c. 611, s. 2; 1989, cc. 498, 655; 1991, c. 655, s. 1; 1993, c. 439, s. 1; 1995, c. 85, s. 1; 2000-5, s. 4.)

Effect of Amendments. — Session Laws 2000-5, s. 4, effective June 6, 2000, in subsection (a1), added subdivision (a1)(4), substituted "agency, or clinic or" for "or agency or" following subdivision (a1)(4) and made minor punctuation changes.

§ 90-21.15. Emergency treatment using automated external defibrillator; immunity.

(a) It is the intent of the General Assembly that, when used in accordance with this section, an automated external defibrillator may be used during an emergency for the purpose of attempting to save the life of another person who is in or who appears to be in cardiac arrest.

(b) For purposes of this section:

(1) "Automated external defibrillator" means a device, heart monitor, and defibrillator that meets all of the following requirements:

a. The device has received approval from the United States Food and Drug Administration of its premarket notification filed pursuant to 21 U.S.C. § 360(k), as amended.

b. The device is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention by an operator, whether defibrillation should be performed.

c. Upon determining that defibrillation should be performed, the device automatically charges and requests delivery of, or delivers, an electrical impulse to an individual's heart.

(2) "Person" means an individual, corporation, limited liability company, partnership, association, unit of government, or other legal entity.

(3) "Training" means a nationally recognized course or training program in cardiopulmonary resuscitation (CPR) and automated external defibrillator use including the programs approved and provided by the:

a. American Heart Association.

b. American Red Cross.

(c) The use of an automated external defibrillator when used to attempt to save or to save a life shall constitute "first-aid or emergency health care treatment" under G.S. 90-21.14(a).

(d) The person who provides the cardiopulmonary resuscitation and automated external defibrillator training to a person using an automated external defibrillator, the person responsible for the site where the automated external defibrillator is located when the person has provided for a program of training, and a North Carolina licensed physician writing a prescription without compensation for an automated external defibrillator whether or not required by any federal or state law, shall be immune from civil liability arising from the use of an automated external defibrillator used in accordance with subsection (c) of this section.

(e) The immunity from civil liability otherwise existing under law shall not be diminished by the provisions of this section.

(f) Nothing in this section requires the purchase, placement, or use of automated external defibrillators by any person, entity, or agency of State, county, or local government. Nothing in this section applies to a product's liability claim against a manufacturer or seller as defined in G.S. 99B-1.

(g) In order to enhance public health and safety, a seller of an automated external defibrillator shall notify the North Carolina Department of Health and Human Services, Division of Facilities Services, Office of Emergency Medical Services of the existence, location, and type of automated external defibrillator. (2000-113, s. 1.)

Editor's Note. — Session Laws 2000-113, s. 3, makes the section effective October 1, 2000, and applicable to causes of action arising on or after that date.

§§ 90-21.16 through 90-21.19: Reserved for future codification purposes.

Article 1D.

Peer Review.

§ 90-21.22. Peer review agreements.

CASE NOTES

Legislature Intended A Broad Privilege. — Nonpublic documents in the possession of defendant/hospital, pertaining to defendant/doctor's participation in a physician's impairment treatment program, were privileged; the Legislature intended to create a broader privilege to information in this section than in peer review statutes such as § 131E-95. Sharpe v. Worland, — N.C. App. —, 527 S.E.2d 75, 2000 N.C. App. LEXIS 269 (2000).

Order Affecting Substantial Rights Is Immediately Reviewable. — When a party asserts a statutory privilege, such as that set out by subsection (e) of this section, which directly relates to a matter to be disclosed under an interlocutory discovery order, and where the assertion is not otherwise frivolous or insubstantial, the challenged order affects a substantial right under §§ 1-277(a) and 7A-27(d)(1) and is immediately reviewable; to the extent that cases like Kaplan v. Prolife Action League of Greensboro, 123 N.C.App. 677, 474 S.E.2d 408 (1996) differ, they are overruled. Sharpe v. Worland, 351 N.C. 159, 522 S.E.2d 577 (1999).

§ 90-21.22A. Medical review committees.

CASE NOTES

Cited in Sharpe v. Worland, — N.C. App. —, 527 S.E.2d 75, 2000 N.C. App. LEXIS 269 (2000).

Article 2.

Dentistry.

§ 90-48. Rules and regulations of Board; violation a misdemeanor.

CASE NOTES

Cited in Sharpe v. Worland, — N.C. App. —, 527 S.E.2d 75, 2000 N.C. App. LEXIS 269 (2000).

§ 90-48.2. Board agreements with special peer review organizations for impaired dentists.

CASE NOTES

Stated in Sharpe v. Worland, — N.C. App. —, 527 S.E.2d 75, 2000 N.C. App. LEXIS 269 (2000).

Article 2A.

Dental Peer Review Protection Act.

§ 90-48.10. Confidentiality of review organization's proceedings and records.

CASE NOTES

Stated in Sharpe v. Worland, — N.C. App. —, 527 S.E.2d 75, 2000 N.C. App. LEXIS 269 (2000).

Article 4A.

North Carolina Pharmacy Practice Act.

§ 90-85.41. Board agreements with special peer review organizations for impaired pharmacists.

CASE NOTES

Stated in Sharpe v. Worland, — N.C. App. —, 527 S.E.2d 75, 2000 N.C. App. LEXIS 269 (2000).

Article 5.

North Carolina Controlled Substances Act.

§ 90-88. Authority to control.

(a) The Commission may add, delete, or reschedule substances within Schedules I through VI of this Article on the petition of any interested party, or its own motion. In every case the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding, deleting or rescheduling a controlled substance within Schedules I through VI of this Article, except as provided in subsection (d) of this section. A petition by the Commission, the North Carolina Department of Justice, or the North Carolina Board of Pharmacy to add, delete, or reschedule a controlled substance within Schedules I through VI of this Article shall be placed on the agenda, for consideration, at the next regularly scheduled meeting of the Commission, as a matter of right.

(a1) In making a determination regarding a substance, the Commission shall consider the following:

(1) The actual or relative potential for abuse;
(2) The scientific evidence of its pharmacological effect, if known;
(3) The state of current scientific knowledge regarding the substance;
(4) The history and current pattern of abuse;
(5) The scope, duration, and significance of abuse;
(6) The risk to the public health;
(7) The potential of the substance to produce psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the required factors, the Commission shall make findings with respect thereto and shall issue an order adding, deleting or rescheduling the substance within Schedules I through VI of this Article.

(c) If the Commission designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by Chapter 150B 150B of the General Statutes is required if the Commission makes a decision to similarly control a substance. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to Chapter 150B of the General Statutes within 180 days of its decision to object.

(e) The Commission shall exclude any nonnarcotic substance from the provisions of this Article if such substance may, under the federal Food, Drug and Cosmetic Act, lawfully be sold over-the-counter without prescription.

(f) Authority to control under this Article does not include distilled spirits, wine, malt beverages, or tobacco.

(g) The Commission shall similarly exempt from the provisions of this Article any chemical agents and diagnostic reagents not intended for administration to humans or other animals, containing controlled substances which either (i) contain additional adulterant or denaturing agents so that the resulting mixture has no significant abuse potential, or (ii) are packaged in such a form or concentration that the particular form as packaged has no significant abuse potential, where such substance was exempted by the Federal Bureau of Narcotics and Dangerous Drugs.

(h) Repealed by Session Laws 1987, c. 413, s. 4.

(i) The North Carolina Department of Health and Human Services shall maintain a list of all preparations, compounds, or mixtures which are excluded, exempted and excepted from control under any schedule of this Article by the United States Drug Enforcement Administration and/or the Commission. This list and any changes to this list shall be mailed to the North Carolina Board of Pharmacy, the State Bureau of Investigation and each district attorney of this State. (1971, c. 919, s. 1; 1973, c. 476, s. 128; cc. 524, 541; c. 1358, ss. 2, 3, 15; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 1987, c. 413, ss. 1-4; 1989, c. 770, s. 16; 1997-443, s. 11A.118(a); 2000-189, s. 4.)

Editor's Note. — This section was amended by Session Laws 2000-189, s. 4, in the coded bill drafting format provided by § 120-20.1. The amendment, to subsection (d), apparently inadvertently failed to delete an existing "150B" in the text. Subsection (d) is set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2000-189, s. 4, effective August 2, 2000, in subsection (d), substituted "takes place 30 days" for "takes places [place] 30 days," substituted "Chapter 150B of the General Statutes" for "G.S. [Chapter]," deleted "but any rule so adopted shall be filed pursuant to Article 5 of Chapter 150B" following "similarly control a substance" and substituted "Chapter 150B of the General Statutes" for "G.S. [Chapter] 150B."

§ 90-89. Schedule I controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(1) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Acetyl-alpha-methylfentanyl (N[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
b. Acetylmethadol.
c. Repealed by Session Laws 1987, c. 412, s. 2.
d. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylprop anamide).
e. Allylprodine.
f. Alphacetylmethadol.
g. Alphameprodine.
h. Alphamethadol.
i. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).
j. Benzethidine.
k. Betacetylmethadol.
l. Beta-hydroxfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamid e).
m. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-pheny lpropanamide).
n. Betameprodine.
o. Betamethadol.
p. Betaprodine.
q. Clonitazene.
r. Dextromoramide.
s. Diampromide.
t. Diethylthiambutene.
u. Difenoxin.
v. Dimenoxadol.
w. Dimepheptanol.
x. Dimethylthiambutene.
y. Dioxaphetyl butyrate.
z. Dipipanone.
aa. Ethylmethylthiambutene.
bb. Etonitazene.
cc. Etoxeridine.
dd. Furethidine.
ee. Hydroxypethidine.
ff. Ketobemidone.
gg. Levomoramide.
hh. Levophenacylmorphan.
ii. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
jj. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-Pi- peridyl]-N-Phenylpropanamide).

kk. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropa namide).
ll. Morpheridine.
mm. Noracymethadol.
nn. Norlevorphanol.
oo. Normethadone.
pp. Norpipanone.
qq. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phen-ethyl)-4-piperidinyl]-propanamide.
rr. Phenadoxone.
ss. Phenampromide.
tt. 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
uu. Phenomorphan.
vv. Phenoperidine.
ww. Piritramide.
xx. Proheptazine.
yy. Properidine.
zz. Propiram.
aaa. Racemoramide.
bbb. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide.
ccc. Tilidine.
ddd. Trimeperidine.

(2) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
a. Acetorphine.
b. Acetyldihydrocodeine.
c. Benzylmorphine.
d. Codeine methylbromide.
e. Codeine-N-Oxide.
f. Cyprenorphine.
g. Desomorphine.
h. Dihydromorphine.
i. Etorphine (except hydrochloride salt).
j. Heroin.
k. Hydromorphinol.
l. Methyldesorphine.
m. Methyldihydromorphine.
n. Morphine methylbromide.
o. Morphine methylsulfonate.
p. Morphine-N-Oxide.
q. Myrophine.
r. Nicocodeine.
s. Nicomorphine.
t. Normorphine.
u. Pholcodine.
v. Thebacon.
w. Drotebanol.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. 3, 4-methylenedioxyamphetamine.
b. 5-methoxy-3, 4-methylenedioxyamphetamine.
c. 3, 4-Methylenedioxymethamphetamine (MDMA).
d. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA).
e. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA).
f. 3, 4, 5-trimethoxyamphetamine.
g. Alpha-ethyltryptamine. Some trade or other names: etryptamine, Monase, alpha-ethyl-1H-indole-3- ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.
h. Bufotenine.
i. Diethyltryptamine.
j. Dimethyltryptamine.
k. 4-methyl-2, 5-dimethoxyamphetamine.
l. Ibogaine.
m. Lysergic acid diethylamide.
n. Mescaline.
o. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
p. N-ethyl-3-piperidyl benzilate.
q. N-methyl-3-piperidyl benzilate.
r. Psilocybin.
s. Psilocin.
t. 2, 5-dimethoxyamphetamine.
u. 2, 5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
v. 4-bromo-2, 5-dimethoxyamphetamine.
w. 4-methoxyamphetamine.
x. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
y. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
z. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.
aa. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.
bb. Parahexyl.
cc. 4-Bromo-2, 5-Dimethoxyphenethylamine.

(4) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:
a. Mecloqualone.
b. Methaqualone.
c. Gamma hydroxybutyric acid; Some other names: GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.

(5) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Aminorex. Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5- phenly-2-oxazolamine.

b. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

c. Fenethylline.

d. Methcathinone. Some trade or other names: 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1- phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylproprion, ephedrone, N-methylcathinone, methylcathinone, AL- 464, AL-422, AL-463, and UR1432.

e. (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4- methyl-5-phenyl-2-oxazolamine] (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).

f. N,N-dimethylamphetamine. Some other names: N,N,alpha-trimethylbenzeneethaneamine; N,N,alpha-trimethylphenethylamine.

g. N-ethylamphetamine. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 844; c. 1358, ss. 4, 5, 15; 1975, c. 443, s. 1; c. 790; 1977, c. 667, s. 3; c. 891, s. 1; 1979, c. 434, s. 1; 1981, c. 51, s. 9; 1983, c. 695, s. 1; 1985, c. 172, ss. 1-3; 1987, c. 412, ss. 1-5; 1989 (Reg. Sess., 1990), c. 1040, s. 1; 1993, c. 319, ss. 1, 2; 1995, c. 186, ss. 1-3; c. 509, s. 135.1(c); 1997-456, ss. 12, 27; 1999-165, s. 1; 2000-140, s. 92.2(a).)

Effect of Amendments. — Session Laws 2000-140, s. 92.2(a), effective December 1, 2000, added subdivision (4)c.

§ 90-91. Schedule III controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high pyschological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Repealed by Session Laws 1993, c. 319, s. 5.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonethylmethane.
9. Sulfonmethane.

9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one. flupyrazapon.

10. Any compound, mixture or preparation containing
   (i) Amobarbital.
   (ii) Secobarbital.
   (iii) Pentobarbital.
   or any salt thereof and one or more active ingredients which are not included in any other schedule.

11. Any suppository dosage form containing
   (i) Amobarbital.
   (ii) Secobarbital.
   (iii) Pentobarbital.
   or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.
2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term “anabolic steroid” means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlorotestosterone),
10. Clostebol,
11. Dehydrochlormethyltestosterone,
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,

17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(*l*) Ketamine.

(m) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 540, s. 5; c. 1358, ss. 7, 15; 1975, c. 442; 1977, c. 667, s. 3; 1979, c. 434, s. 3; 1981, c. 51, s. 9; 1987, c. 412, ss. 8-10; 1987 (Reg. Sess., 1988), c. 1055; 1991, c. 413, s. 1; 1993, c. 319, s. 5; 1999-370, s. 3; 2000-140, s. 92.2(b).)

Effect of Amendments. —
Session Laws 2000-140, s. 92.2(c), effective December 1, 2000, added subsection (m).

§ 90-92. Schedule IV controlled substances.

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule III of this Article; currently accepted medical use in the United States; and limited physical or pyschological dependence relative to the substances listed in Schedule III of this Article. The following controlled substances are included in this schedule:

(1) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Alprazolam.
b. Barbital.
c. Bromazepam.
d. Camazepam.

e. Chloral betaine.
f. Chloral hydrate.
g. Chlordiazepoxide.
h. Clobazam.
i. Clonazepam.
j. Clorazepate.
k. Clotiazepam.
l. Cloxazolam.
m. Delorazepam.
n. Diazepam.
o. Estazolam.
p. Ethchlorvynol.
q. Ethinamate.
r. Ethyl loflazepate.
s. Fludiazepam.
t. Flunitrazepam.
u. Flurazepam.
v. Repealed by Session Laws 2000, c. 140, s. 92.2(c), effective December 1, 2000.
w. Halazepam.
x. Haloxazolam.
y. Ketazolam.
z. Loprazolam.
aa. Lorazepam.
bb. Lormetazepam.
cc. Mebutamate.
dd. Medazepam.
ee. Meprobamate.
ff. Methohexital.
gg. Methylphenobarbital (mephobarbital).
hh. Midazolam.
ii. Nimetazepam.
jj. Nitrazepam.
kk. Nordiazepam.
ll. Oxazepam.
mm. Oxazolam.
nn. Paraldehyde.
oo. Petrichloral.
pp. Phenobarbital.
qq. Pinazepam.
rr. Prazepam.
ss. Quazepam.
tt. Temazepam.
uu. Tetrazepam.
vv. Triazolam.
ww. Zolpidem.

(2) Any material, compound, mixture, or preparation which contains any of the following substances, including its salts, or isomers and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:
a. Fenfluramine.
b. Pentazocine.

(3) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers

whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
a. Diethylpropion.
b. Mazindol.
c. Pemoline (including organometallic complexes and chelates thereof).
d. Phentermine.
e. Cathine.
f. Fencamfamin.
g. Fenproporex.
h. Mefenorex.
i. Sibutramine.
(4) Other Substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:
a. Dextropropoxyphene (Alpha-(plus)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).
b. Pipradrol.
c. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).
d. Butorphanol.
(5) Narcotic Drugs. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
b. Buprenorphine.

(b) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active, nonnarcotic, medicinal ingredients not having a stimulant or depressant effect on the central nervous system; provided, that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, ss. 8, 15; c. 1446, s. 5; 1975, cc. 401, 819; 1977, c. 667, s. 3; c. 891, s. 3; 1979, c. 434, ss. 4-6; 1981, c. 51, s. 9; 1985, c. 172, ss. 6-8; 439, s. 1; 1987, c. 412, ss. 11, 12; 1993, c. 319, s. 6; 1995, c. 509, s. 38; 1997-456, s. 27; 1997-501, s. 1; 1999-165, s. 3; 2000-140, s. 92.2(c).)

Effect of Amendments. — Session Laws 2000-140, s. 92.2(c), effective December 1, 2000, repealed (a)(1)v., stating "Gamma Hydroxybutyric Acid."

§ 90-95. Violations; penalties.

(a) Except as authorized by this Article, it is unlawful for any person:
(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;
(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;
(3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon, except that the sale of a controlled substance classified in Schedule I or II shall be punished as a Class G felon;

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, except that the sale of a controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class H felon. The transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the

Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Anhydrous ammonia.
(1a) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.
(30) Gamma-butyrolactone.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. —

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Repealed by Session Laws 1999-370, s. 1, effective December 1, 1999.

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine or amphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA), including its salts, isomers, and salts of isomers, or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in MDA/MDMA." If the quantity of the substance or mixture involved:

a. Is 100 or more tablets, capsules, or other dosage units, but less than 500 tablets, capsules, or other dosage units, or 28 grams or more, but less than 200 grams, the person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more tablets, capsules, or other dosage units, but less than 1,000 tablets, capsules, or other dosage units, or 200 grams or more, but less than 400 grams, the person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams or more, the person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred fifty thousand dollars ($250,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section. (1971, c. 919, s. 1; 1973, c. 654, s. 1; c. 1078; c. 1358, s. 10; 1975, c. 360, s. 2; 1977, c. 862, ss. 1, 2; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1251, ss. 4-7; 1983, c. 18; c. 294, s. 6; c. 414; 1985, c. 569, s. 1; c. 675, ss. 1, 2; 1987, c. 90; c. 105, ss. 4, 5; c. 640, ss. 1, 2; c. 783, s. 4; 1989, c. 641; c. 672; c. 690; c. 770, s. 68; 1989 (Reg. Sess., 1990), c. 1024, s. 17; c. 1039, s. 5; c. 1081, s. 2; 1991, c. 484, s. 1; 1993, c. 538, s. 30; c. 539, s. 1358.1; 1994, Ex. Sess., c. 11, s. 1; c. 14, ss. 46, 47; c. 24, s. 14(b); 1996, 2nd Ex. Sess., c. 18, s. 20.13(c); 1997-304, ss. 1, 2; 1997-443, s. 19.25(b), (u), (ii); 1998-212, s. 17.16(e); 1999-165, s. 4; 1999-370, s. 1; 2000-140, s. 92.2(d).)

Effect of Amendments. —
Session Laws 2000-140, s. 92.2(d), effective December 1, 2000, added subdivision (d2)(30).

CASE NOTES

I. GENERAL CONSIDERATION.

Stated in State v. Chavis, 134 N.C. App. 546, 518 S.E.2d 241 (1999).

III. SALE OR DELIVERY.

Evidence Admissible — Admission of testimony revealing that police informant became informant as a result of being arrested for buying cocaine from defendant and promising to help catch the seller, i.e. the defendant, was proper to prove intent, a common plan or scheme, and to identify defendant. State v. Montford, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 431 (2000).

IV. POSSESSION.

A. In General.

Possession Includes Mixtures. —
Possession of a 273-gram mixture containing only 27 grams of pure cocaine is legally sufficient to support a conviction for trafficking in 200-400 grams of cocaine; the relevant question is the weight of the total substances seized, regardless of the substances' purity. State v. Broome, 136 N.C. App. 82, 523 S.E.2d 448 (1999), cert. denied, 351 N.C. 362, — S.E.2d — (2000).

Handling for Inspection Purposes Did Not Constitute Possession. — The record failed to contain substantial evidence that the defendant possessed cocaine within the meaning of the statute where the the officer sat down next to the defendant in the back seat of the informant's vehicle and handed the defendant a package containing cocaine which he passed on to another person, who was sitting in the front seat, who tested the cocaine by tasting it, handed it back to the officer and stated that he did not want to purchase the cocaine because the quality was not good. Defendant's handling of the cocaine for inspection purposes did not constitute possession within the meaning of this section, as he did not have the power and intent to control its disposition or use. State v. Wheeler, — N.C. App. —, 530 S.E.2d 311, 2000 N.C. App. LEXIS 546 (2000).

Evidence Insufficient to Establish Constructive Possession. —
The defense of impossibility properly applied to bar a conviction under this section, and constructive possession was inapplicable because there was no evidence as to the actual source of the drugs and, although the defendant may well have had the requisite intent, there was no evidence he ever had the capability to exercise dominion and control over the original shipment of drugs; instead, an appropriate charge would have been an attempt, pursuant to § 90-98. State v. Clark, — N.C. App. —, 527 S.E.2d 319, 2000 N.C. App. LEXIS 267 (2000).

Attempt to traffic in marijuana by possession is a lesser-included offense of trafficking in marijuana by possession, although the penalty for conviction of an attempted controlled substance offense is the same as the penalty for a conviction of the underlying crime. State v. Clark, — N.C. App. —, 527 S.E.2d 319, 2000 N.C. App. LEXIS 267 (2000).

Evidence Sufficient. —
Where the State's evidence tended to show that defendant rented two motel rooms, was the sole occupant of the rooms, that defendant retained keys to both rooms, and only his belongings were seized from the rooms, there was sufficient evidence of defendant's exclusive control and constructive possession of the controlled substance. State v. Williams, 136 N.C. App. 218, 523 S.E.2d 428 (1999).

Evidence was sufficient to find that defendant took possession of drugs in exchange for money in spite of defendant's claim that substance never left police's possession where officer placed them on defendant's back seat, where the parking lot was surrounded by police, and where the defendant was unable to leave the lot and never touched the drugs. State v. Broome, 136 N.C. App. 82, 523 S.E.2d 448 (1999), cert. denied, 351 N.C. 362, — S.E.2d — (2000).

Mere Presence Instruction. — The court did not err in refusing defendant's request for a specific mere presence instruction where it provided defendant's requested instruction in substance. State v. Williams, 136 N.C. App. 218, 523 S.E.2d 428 (1999).

Instruction on Constructive Possession. —

The court's refusal to label the distinction between actual and constructive possession was not error where it had provided defendant's request in substance. State v. Williams, 136 N.C. App. 218, 523 S.E.2d 428 (1999).

Repetition of Instruction Not Prejudicial. — Trial judge neither prejudiced the defendant nor unduly emphasized its instruction on possession by clarifying the instruction to the jury three times. State v. Williams, 136 N.C. App. 218, 523 S.E.2d 428 (1999).

B. Possession with Intent to Sell or Deliver.

The failure to admit testimony challenging the undercover procedures used by an undercover agent in obtaining drugs from the defendant did not constitute an abuse of discretion, under § 8C-1-702, where the evidence was already sufficient to prove the drug charges, under this section, and where the record already contained evidence that the agent used the drugs from the buys and the jury, therefore, had the ability, on its own, to assess the agent's credibility. State v. Mackey, — N.C. App. —, 530 S.E.2d 306, 2000 N.C. App. LEXIS 533 (2000).

V. TRAFFICKING.

Evidence held sufficient

The evidence was sufficient under this section where the defendant had nonexclusive possession of a motel room but law enforcement officers found $ 800.00 cash and 2.22 grams of cocaine in the pocket of defendant's pants, enough to allow a reasonable person to infer that defendant had the power and intent to control the cocaine found in the bathroom, and, therefore, constructively possessed the cocaine. State v. Jackson, — N.C. App. —, 529 S.E.2d 253, 2000 N.C. App. LEXIS 424 (N.C. Ct. App. 2000).

The defendant's sentence was not disproportionate to her crimes although her more culpable co-conspirators received lesser or equivalent sentences after plea-arrangements where the sentences imposed upon defendant, albeit consecutive, were within the presumptive statutory range authorized for her drug trafficking offenses under the Structured Sentencing Act. State v. Parker, — N.C. App. —, 530 S.E.2d 297, 2000 N.C. App. LEXIS 506 (2000).

§ 90-96. Conditional discharge and expunction of records for first offense.

CASE NOTES

Conviction for Purposes of Structured Sentencing Act. — The defendant's guilty plea followed by probation under the provisions of this section was a "conviction" for the purposes of the Structured Sentencing Act, § 15A-1340.10 et seq., and thus furnished a legitimate basis for the trial court's determination of defendant's sentence. State v. Hasty, 133 N.C. App. 563, 516 S.E.2d 428 (1999).

§ 90-98. Attempt and conspiracy; penalties.

CASE NOTES

Evidence Held to Support Conviction of Attempt. —

Where the defense of impossibility properly applied to bar a conviction under § 90-95, and constructive possession was inapplicable because there was no evidence as to the actual source of the drugs and, although the defendant had the requisite intent, there was no evidence he ever had the capability to exercise dominion and control over the original shipment of drugs, which contained twelve and one-half pounds of marijuana hidden inside a television set, the court held that an appropriate alternative charge would have been an attempt, pursuant to this section. State v. Clark, — N.C. App. —, 527 S.E.2d 319, 2000 N.C. App. LEXIS 267 (2000).

Attempt to traffic in marijuana by possession is a lesser-included offense of trafficking in marijuana by possession although the penalty for conviction of an attempted controlled substance offense is the same as the penalty for a conviction of the underlying crime. State v. Clark, — N.C. App. —, 527 S.E.2d 319, 2000 N.C. App. LEXIS 267 (2000).

§ 90-108. Prohibited acts; penalties.

CASE NOTES

Continuing Offense Precludes Several Violations. — Defendant's conviction of two counts of keeping and maintaining a dwelling for the use of a controlled substance in violation of this section, where no evidence indicated a termination and subsequent resumption of drug trafficking, was erroneous and constituted double jeopardy. State v. Grady, — N.C. App. —, 524 S.E.2d 75, 2000 N.C. App. LEXIS 12 (2000).

Change of Address Allowed on Indictment. — The trial court correctly allowed State's amendment to an indictment for keeping and maintaining a dwelling for the use of a controlled substance to correct the address from "919 Dollard Town Road" to "929 Dollard Town Road." State v. Grady, — N.C. App. —, 524 S.E.2d 75, 2000 N.C. App. LEXIS 12 (2000).

Article 6.

Optometry.

§ 90-116. Board of Examiners in Optometry.

In order to properly regulate the practice of optometry, there is established a North Carolina State Board of Examiners in Optometry, which shall consist of five regularly graduated optometrists who have been engaged in the practice of optometry in this State for at least five years and two members to represent the public at large.

No public member shall at any time be a health care provider, be related to or be the spouse of a health care provider, or have any pecuniary interest in the profitability of a health care provider. For purposes of this section, the term "health care provider" shall have the same meaning as provided in G.S. 58-47-5(4). The Governor shall appoint the two public members not later than July 1, 1981.

The optometric members of the Board shall be appointed by the Governor from a list provided by the North Carolina State Optometric Society. For each vacancy, the society must submit at least three names to the Governor. The society shall establish procedures for the nomination and election of optometrist members of the Board. These procedures shall be adopted under the rule-making procedures described in Article 2A, Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed optometrists residing in North Carolina. Such procedures shall not conflict with the provisions of this section. Every optometrist with a current North Carolina license residing in the State shall be eligible to vote in all such elections, and the list of licensed optometrists shall constitute the registration list for elections. Any decision of the society relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the society has rendered the decision in controversy, and all such cases shall be heard de novo.

All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive five-year terms, except that each member shall serve until his successor is chosen and qualifies.

The Governor may remove any member for good cause shown. Any vacancy in the optometrist membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of at least three names submitted by the North Carolina State Optometric Society Executive Council. Any vacancy in the public membership of the Board shall be filled by the Governor for the unexpired term. (1909, c. 444, s. 3; 1915, c. 21, s. 1; C.S., s. 6689; 1935, c. 63; 1981, c. 496, s. 1; 1987, c. 827, s. 1; 2000-189, s. 5.)

Effect of Amendments. — Session Laws 2000-189, s. 5, effective August 2, 2000, substituted "Article 2A" for "Article 2" in the third paragraph.

§ 90-121.2. Rules and regulations; discipline, suspension, revocation and regrant of certificate.

(a) The Board shall have the power to make, adopt, and promulgate such rules and regulations, including rules of ethics, as may be necessary and proper for the regulation of the practice of the profession of optometry and for the performance of its duties. The Board shall have jurisdiction and power to hear and determine all complaints, allegations, charges of malpractice, corrupt or unprofessional conduct, and of the violation of the rules and regulations, including rules of ethics, made against any optometrist licensed to practice in North Carolina. The Board shall also have the power and authority to: (i) refuse to issue a license to practice optometry; (ii) refuse to issue a certificate of renewal of a license to practice optometry; (iii) revoke or suspend a license to practice optometry; and (iv) invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper; in any instance or instances in which the Board is satisfied that such applicant or licensee:

(1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;
(2) Is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his ability to practice optometry;
(3) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;
(4) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;
(5) Has been convicted of or entered a plea of guilty or nolo contendere to any charge of violation of any State or federal narcotic or barbiturate law;
(6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;
(7) Is mentally, emotionally, or physically unfit to practice optometry or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of his patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice optometry unless or until such person shall have been subsequently lawfully declared to be mentally competent;
(8) Repealed by Session Laws 1981, c. 496, s. 12.
(9) Has permitted the use of his name, diploma or license by another person either in the illegal practice of optometry or in attempting to fraudulently obtain a license to practice optometry;
(10) Has engaged in such immoral conduct as to discredit the optometry profession;

(11) Has obtained or collected or attempted to obtain or collect any fee through fraud, misrepresentation, or deceit;
(12) Has been negligent in the practice of optometry;
(13) Has employed a person not licensed in this State to do or perform any act of service, or has aided, abetted or assisted any such unlicensed person to do or perform any act or service which under this Article can lawfully be done or performed only by an optometrist licensed in this State;
(14) Is incompetent in the practice of optometry;
(15) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients, including false or misleading advertising;
(16) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;
(17) Has committed any fraudulent or misleading acts in the practice of optometry;
(18) Repealed by Session Laws 1981, c. 496, s. 12.
(19) Has, in the practice of optometry, committed an act or acts constituting malpractice;
(20) Repealed by Session Laws 1981, c. 496, s. 12.
(21) Has permitted an optometric assistant in his employ or under his supervision to do or perform any act or acts violative to this Article or of the rules and regulations promulgated by the Board;
(22) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of optometry;
(23) Has persistently maintained, in the practice of optometry, unsanitary offices, practices, or techniques;
(24) Is a menace to the public health by reason of having a serious communicable disease;
(25) Has engaged in any unprofessional conduct as the same may be from time to time defined by the rules and regulations of the Board.

In addition to and in conjunction with the actions described above, the Board may make a finding adverse to a licensee or applicant but withhold imposition of judgment and penalty or it may impose judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. The Board may administer a public or private reprimand or a private letter of concern, and the private reprimand and private letter of concern shall not require a hearing in accordance with G.S. 90-121.3 and shall not be disclosed to any person except the licensee. The Board may require a licensee to: (i) make specific redress or monetary redress; (ii) provide free public or charity service; (iii) complete educational, remedial training, or treatment programs; (iv) pay a fine; and (v) reimburse the Board for disciplinary costs.

(b) If any person engages in or attempts to engage in the practice of optometry while his license is suspended, his license to practice optometry in the State of North Carolina may be permanently revoked.

(c) The Board may, on its own motion, initiate the appropriate legal proceedings against any person, firm or corporation when it is made to appear to the Board that such person, firm or corporation has violated any of the provisions of this Article.

(d) The Board may appoint, employ or retain an investigator or investigators for the purpose of examining or inquiring into any practices committed in this State that might violate any of the provisions of this Article or any of the rules and regulations promulgated by the Board.

(e) The Board may employ or retain legal counsel for such matters and purposes as may seem fit and proper to said Board.

(f) As used in this section the term "licensee" includes licensees, provisional licensees and holders of intern permits, and the term "license" includes license, provisional license and intern permit.

(g) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting or investigating the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice optometry and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice optometry, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice. (1973, c. 800, s. 20; 1981, c. 496, ss. 12, 13; 2000-184, s. 6.)

Effect of Amendments. — Session Laws 2000-184, s. 6, effective August 2, 2000, added the last paragraph in subsection (a); and added subsection (g).

Article 8.

Chiropractic.

§ 90-139. Creation and membership of Board of Examiners.

(a) The State Board of Chiropractic Examiners is created to consist of eight members appointed by the Governor and General Assembly. Six of the members shall be practicing doctors of chiropractic, who are residents of this State and who have actively practiced chiropractic in the State for at least eight consecutive years immediately preceding their appointments; four of these six members shall be appointed by the Governor, and two by the General Assembly in accordance with G.S. 120-121, one each upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. No more than three members of the Board may be graduates of the same college or school of chiropractic. The other two members shall be persons chosen by the Governor to represent the public at large. The public members shall not be health care providers nor the spouses of health care providers. For purposes of Board membership, "health care provider" means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member.

(b) All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to the Board on or after July 1, 1981, shall serve more than two complete consecutive terms, except that each member shall serve until his successor is chosen and qualifies. The initial appointment of the General Assembly upon the recommendation of the President of the Senate shall be for a term to expire June 30, 1986, and the initial appointment of the General Assembly upon the recommendation of the

Speaker of the House of Representatives shall be for a term to expire June 30, 1985, subsequent appointments upon the recommendation of the President of the Senate shall be for terms of three years, subsequent appointments upon the recommendation of the Speaker of the House of Representatives shall be for terms of two years.

(c) The Governor and General Assembly, respectively, may remove any member appointed by them for good cause shown. In addition, upon the request of the Speaker of the House of Representatives or the President Pro Tempore of the Senate concerning a person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, the Governor may remove such appointee for good cause shown, if the request is made and removal occurs either (i) when the General Assembly has adjourned to a date certain, which date is more than 10 days after the date of adjournment, or (ii) after sine die adjournment of the regular session. The Governor may appoint persons to fill vacancies of persons appointed by him to fill unexpired terms. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122. (1917, c. 73, s. 1; C.S., s. 6710; 1979, c. 108, s. 1; 1981, c. 766, s. 1; 1983, c. 717, ss. 100-104; 1995, c. 490, s. 11; 1999-405, s. 3; 1999-431, s. 3.9; 2000-181, s. 2.7(a).)

Effect of Amendments. —
Session Laws 2000-181, s. 2.7(a), effective August 2, 2000, and applicable to the next appointment by the Governor to replace a member who is a practicing doctor of chiropractic, in subsection (a), substituted "Six of the members" for "Seven of the members," substituted "four of these six members" for "five of these seven members," substituted "The other two members" for "The other member," and made minor wording and punctuation changes throughout.

§ 90-140. Selection of chiropractic members of Board.

The Governor and the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint chiropractic members of the Board for terms of three years from a list provided by the Board, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint a chiropractic member of the Board for a term of two years from a list provided by the Board. For each vacancy, the Board must submit at least three names to the Governor, President Pro Tempore of the Senate and Speaker of the House.

The Board shall establish procedures for the nomination and election of chiropractic members. These procedures shall be adopted under Article 2A of Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed chiropractors residing in North Carolina. These procedures shall not conflict with the provisions of this section. Every chiropractor with a current North Carolina license residing in this State shall be eligible to vote in all such elections, and the list of licensed chiropractors shall constitute the registration list for elections. Any decision of the Board relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the Board has rendered the decision in controversy, and all such cases shall be heard de novo. (1917, c. 73, s. 2; C.S., s. 6711; 1933, c. 442, s. 1; 1963, c. 646, s. 1; 1979, c. 108, s. 2; 1981, c. 766, s. 2; 1983, c. 717, s. 106; 1987, c. 827, s. 1; 1995, c. 490, s. 11.1; 2000-189, s. 6.)

Effect of Amendments. — Session Laws 2000-189, s. 6, effective August 2, 2000, substituted "Article 2A" for "Article 2" in the second paragraph.

§ 90-143. Definitions of chiropractic; examinations; educational requirements.

CASE NOTES

Quoted in Winston v. Brodie, 134 N.C. App. 260, 517 S.E.2d 203 (1999).

§ 90-157.2. Chiropractor as expert witness.

CASE NOTES

Testimony Regarding Extremities. — Trial court correctly allowed chiropractor's testimony concerning injuries to victim's bodily extremities, as these constitute parts of the body to which nerves radiate from the spine and come within the scope chiropractic expertise. Winston v. Brodie, 134 N.C. App. 260, 517 S.E.2d 203 (1999).

Testimony Regarding Permanency And Cause of Injuries. — Trial court correctly allowed chiropractor's testimony concerning the permanency and cause of victim's injuries. Winston v. Brodie, 134 N.C. App. 260, 517 S.E.2d 203 (1999).

Jury Instructions Held Sufficient. — Where doctor of chiropractic was qualified and tendered as an expert witness and the jury was instructed that he was "accepted by the Court as an expert in the field of chiropractic," the trial court did not err in failing to instruct the jury later that a chiropractor is an expert witness in accordance with this provision. Blackmon v. Bumgardner, 135 N.C. App. 125, 519 S.E.2d 335 (1999).

Article 9A.

Nursing Practice Act.

§ 90-171.19. Legislative findings.

CASE NOTES

Violation of Minimum Standards as Violation of North Carolina Public Policy. — Plaintiff's complaint adequately alleged that she was terminated for meeting the minimum requirements of the practice of nursing as established and mandated by this Article and regulations thereunder, in violation of the public policy of North Carolina to ensure the public a minimum level of safe nursing care. Deerman v. Beverly Cal. Corp., 135 N.C. App. 1, 518 S.E.2d 804 (1999).

§ 90-171.20. Definitions.

CASE NOTES

Applied in Deerman v. Beverly Cal. Corp., 135 N.C. App. 1, 518 S.E.2d 804 (1999).

OPINIONS OF ATTORNEY GENERAL

It is unlawful for certified registered nurse anesthetists (CRNAs) to provide anesthesia care without physician supervision. See opinion of Attorney General to The Honorable James S. Forrester, M.D. North Carolina General Assembly, 1998 N.C.A.G. 58 (12/31/98).

§ 90-171.37. Revocation, suspension, or denial of licensure.

CASE NOTES

Quoted in Deerman v. Beverly Cal. Corp., 135 N.C. App. 1, 518 S.E.2d 804 (1999).

ARTICLE 10A.

Practice of Midwifery.

§ 90-178.3. Regulation of midwifery.

(a) No person shall practice or offer to practice or hold oneself out to practice midwifery unless approved pursuant to this Article.

(b) A person approved pursuant to this Article may practice midwifery in a hospital or non-hospital setting and shall practice under the supervision of a physician licensed to practice medicine who is actively engaged in the practice of obstetrics. A registered nurse approved pursuant to this Article is authorized to write prescriptions for drugs in accordance with the same conditions applicable to a nurse practitioner under G.S. 90-18.2(b).

(c) Graduate nurse midwife applicant status may be granted by the joint subcommittee in accordance with G.S. 90-178.4. (1983, c. 897, s. 1; 2000-140, s. 60.)

Effect of Amendments. — Session Laws 2000-140, s. 60, effective July 21, 2000, added subsection (c).

ARTICLE 16.

Dental Hygiene Act.

§ 90-223. Powers and duties of Board.

(a) The Board is authorized and empowered to:

(1) Conduct examinations for licensure,

(2) Issue licenses and provisional licenses,

(3) Issue annual renewal certificates, and

(4) Renew expired licenses.

(b) The Board shall have the authority to make or amend rules and regulations not inconsistent with this Article governing the practice of dental hygiene and the granting, revocation and suspension of licenses and provisional licenses of dental hygienists.

(1) Any rule adopted under this Article shall be distributed to all licensed dentists and all licensed dental hygienists within 30 days of final approval by the Board.

(2) The Board shall issue every two years a compilation or supplement of the Dental Hygiene Act and the Board rules and regulations, and, upon written request therefor, a directory of dental hygienists to each licensed dentist and dental hygienist.

(c) The Board shall keep on file in its office at all times a complete record of the names, addresses, license numbers and renewal certificate numbers of all persons entitled to practice dental hygiene in this State.

(d) The Board shall, in addition to any other requirements for Board approval of a school or program of dental hygiene for purposes of this Article, require that any school or program in North Carolina develop and implement a procedure for advanced placement of potentially qualified persons. This procedure shall be designed to encourage and allow credit for any person who has attained special capabilities in dental work through military service, on-the-job training or working experience, or other means not otherwise qualifying the person to be immediately eligible for licensure. The procedure shall include these elements: public announcement of the procedure, a method for persons who have special capabilities through training or experience to make application to the school or program for advanced placement, personal counseling on obtaining advanced placement, administration of specially prepared written and clinical examinations for all parts of the curriculum otherwise required for graduation, exemption from course requirements when results of the examinations so indicate, and appropriate modification of curriculum requirements, when necessary, to facilitate individual advancement in education programs. The procedure for advanced placement shall not be approved by the Board unless it is fairly designed to facilitate the substitution of military or civilian training and experience for regular curricula, taking into account that the special nature of military and certain civilian training and experience may be equivalent without necessarily being identical to the courses of the school or program.

(e) The Board shall have the authority to provide for programs for impaired dental hygienists as authorized in G.S. 90-48.3. (1945, c. 639, s. 3; 1971, c. 756, s. 2; 1973, c. 871, s. 2; 1979, 2nd Sess., c. 1195, s. 14; 1987, c. 827, s. 1; 1999-382, s. 2; 2000-189, s. 7.)

Effect of Amendments. —
Session Laws 2000-189, s. 7, effective August 2, 2000, substituted "Any rule adopted under this Article shall be distributed" for "Any rule promulgated or amended under this Article shall be filed and distributed in accordance with the provisions of Article 5 of Chapter 150B of the General Statutes of North Carolina. A copy must be distributed" in subdivision (b)(1).

Article 36.

Massage and Bodywork Therapy Practice.

§ 90-624. Exemptions.

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.

(4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.
(7) The practice of techniques that are specifically intended to affect the human energy field.
(8) A person employed by or contracting with a not-for-profit community service organization to perform massage and bodywork therapy on persons who are members of the not-for-profit community service organization and are of the same gender as the person giving the massage or bodywork therapy. (1998-230, s. 10; 2000-140, s. 93.)

Effect of Amendments. — Session Laws 2000-140, s. 93, effective July 21, 2000, added subdivision (8).

Article 37.

Health Care Practitioner Identification.

§§ 90-641 through 90-645: Reserved for future codification purposes.

Article 38.

Respiratory Care Practice Act.

§ 90-646. Short title.

This Article may be cited as the "Respiratory Care Practice Act". (2000-162, s. 1.)

Editor's Note. — Session Laws 2000-162, s. 5, made this Article effective August 2, 2000.

Session Laws 2000-110, s. 1, and Session Laws 1000-162, s. 1, both enacted new Articles in Chapter 90. Session Laws 2000-110, s. 1, enacted §§ 90-646 through 90-649 as Article 37. Session Laws 2000-162, s. 1, enacted §§ 90-646 through 90-665 as Article 38. Session Laws 2000-140, s. 98, renumbered the Article enacted by Session Laws 2000-110 as Article 39, §§ 90-671 through 90-674.

§ 90-647. Purpose.

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed pursuant to this Article. (2000-162, s. 1.)

§ 90-648. Definitions.

The following definitions apply in this Article:
(1) Board. — The North Carolina Respiratory Care Board.
(2) Diagnostic testing. — Cardiopulmonary procedures and tests performed on the written order of a physician licensed under Article 1 of this Chapter that provide information to the physician to formulate a diagnosis of the patient's condition. The tests and procedures may

include pulmonary function testing, electrocardiograph testing, cardiac stress testing, and sleep related testing.

(3) Direct supervision. — The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.

(4) Individual. — A human being.

(5) License. — A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this Article.

(6) Licensee. — A person who has been issued a license under this Article.

(7) Medical director. — An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.

(8) Person. — An individual, corporation, partnership, association, unit of government, or other legal entity.

(9) Physician. — A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.

(10) Practice of respiratory care. — As defined by the written order of a physician licensed under Article 1 of this Chapter, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:

a. Medical gases, humidity, and aerosols including the maintenance of associated apparatus, except for the purpose of anesthesia.

b. Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring.

c. Mechanical or physiological ventilatory support.

d. Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these services within the scope of practice by the facility's governing board.

e. Hyperbaric oxygen therapy.

f. New and innovative respiratory care and related support activities in appropriately identified environments and under the training and practice guidelines established by the American Association of Respiratory Care.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this subdivision.

(11) Respiratory care. — As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

(12) Respiratory care practitioner. — A person who has been licensed by the Board to engage in the practice of respiratory care.

(13) Support activities. — Procedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. The term also includes giving instructions on the use, fitting, and

application of apparatus, but does not include therapeutic evaluation and assessment. (2000-162, s. 1.)

§ 90-649. North Carolina Respiratory Care Board; creation.

(a) The North Carolina Respiratory Care Board is created. The Board shall consist of 10 members as follows:

(1) Two members shall be respiratory care practitioners.

(2) Four members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.

(3) One member shall represent the NCHA.

(4) One member shall represent the North Carolina Association of Medical Equipment Services.

(5) Two members shall represent the public at large.

(b) Members of the Board shall be citizens of the United States and residents of this State. The respiratory care practitioner members shall have practiced respiratory care for at least five years and shall be licensed under this Article. The public members shall not be: (i) a respiratory care practitioner, (ii) an agent or employee of a person engaged in the profession of respiratory care, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Board. (2000-162, s. 1.)

Editor's Note. — Session Laws 2000-162, s. 3, provides: "The initial appointments to the North Carolina Respiratory Care Board, created in G.S. 90-649, as enacted in Section 1 of this act, shall be appointed no later than October 1, 2000. Notwithstanding the provisions of G.S. 90-649(b), as enacted in Section 1 of this act, the initial members of the North Carolina Respiratory Care Board who are appointed pursuant to G.S. 90-649(a)(1) must have passed the entry-level examination administered by the National Board for Respiratory Care, Inc. Notwithstanding the provisions of G.S. 90-650(b), as enacted in Section 1 of this act, of the initial appointments to the North Carolina Respiratory Care Board, one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for three-year terms; one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for two-year terms; the public members appointed by the Governor shall be appointed for a one-year term; the physician member appointed by the North Carolina Medical Society shall be appointed for a one-year term; the physician member appointed by the Old North State Medical Society shall be appointed for a one-year term; and the members appointed by the North Carolina Hospital Association and the North Carolina Association of Medical Equipment Services shall be appointed for one-year terms."

§ 90-650. Appointments and removal of Board members; terms and compensation.

(a) The members of the Board shall be appointed as follows:

(1) The Governor shall appoint the public members described in G.S. 90-649(a)(5).

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(4) The North Carolina Medical Society shall appoint one of the physician members described in G.S. 90-649(a)(2).

(5) The Old North State Medical Society shall appoint one of the physician members described in G.S. 96-649(a)(2).

(6) The North Carolina Hospital Association shall appoint the member described in G.S. 90-649(a)(3).

(7) The North Carolina Association of Medical Equipment Services shall appoint the member described in G.S. 90-649(a)(4).

(b) Members of the Board shall take office on the first day of November immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified. No member shall serve on the Board for more than two consecutive terms.

(c) The Governor may remove members of the Board, after notice and an opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this Article, or committing any act prohibited by this Article.

(d) Any vacancy shall be filled by the authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Members of the Board shall receive no compensation for their services but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

(f) Individual members shall be immune from civil liability arising from activities performed within the scope of their official duties. (2000-162, s. 1.)

§ 90-651. Election of officers; meetings of the Board.

(a) The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted pursuant to this Article, except that all officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(b) The Board shall hold at least two regular meetings each year as provided by rules adopted pursuant to this Article. The Board may hold additional meetings upon the call of the chair or any two Board members. A majority of the Board membership shall constitute a quorum. (2000-162, s. 1.)

§ 90-652. Powers and duties of the Board.

The Board shall have the power and duty to:

(1) Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(2) Establish and adopt rules necessary to conduct its business, carry out its duties, and administer this Article.

(3) Adopt and publish a code of ethics.

(4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.
(5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.
(6) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article and purchase or rent office space, equipment, and supplies.
(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.
(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
(9) Establish certain reasonable fees as authorized by this Article for applications for examination, licensure, provisional licensure, renewal of licensure, and other services provided by the Board.
(10) Submit an annual report to the North Carolina Medical Board, the North Carolina Hospital Association, the North Carolina Society of Respiratory Care, the Governor, and the General Assembly of all the Board's official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of respiratory care.
(11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted pursuant to this Article.
(12) Request and receive the assistance of State educational institutions or other State agencies.
(13) Establish and approve continuing education requirements for persons seeking licensure under this Article. (2000-162, s. 1.)

§ 90-653. Licensure requirements; examination.

(a) Each applicant for licensure under this Article shall meet the following requirements:
(1) Submit a completed application as required by the Board.
(2) Submit any fees required by the Board.
(3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements of a respiratory care education program as approved by the Commission for Accreditation of Allied Health Educational Programs.
(4) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association.
(5) Pass the entry-level examination given by the National Board for Respiratory Care, Inc.

(b) At least three times each year, the Board shall cause the examination required in subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to be announced by the Board. Any applicant who fails to pass the first examination may take additional examinations in accordance with rules adopted pursuant to this Article. (2000-162, s. 1.)

§ 90-654. Exemption from certain requirements.

(a) The Board may issue a license to an applicant who, as of October 1, 2000, has passed the entry-level examination given by the National Board for Respiratory Care, Inc. An applicant applying for licensure under this subsection shall submit his or her application to the Board before October 1, 2002.

(b) The Board may grant a temporary license to an applicant who, as of October 1, 2000, does not meet the qualifications of G.S. 90-653 but, through written evidence verified by oath, demonstrates that he or she is performing the duties of a respiratory care practitioner within the State. The temporary license is valid until October 1, 2002, within which time the applicant shall be required to complete the requirements of G.S. 90-653(a)(5). A license granted under this subsection shall contain an endorsement indicating that the license is temporary and shall state the date the license was granted and the date it expires. (2000-162, s. 1.)

§ 90-655. Licensure by reciprocity.

The Board may grant, upon application and the payment of proper fees, a license to a person who, at the time of application holds a valid license, certificate, or registration as a respiratory care practitioner issued by another state or a political territory or jurisdiction acceptable to the Board if, in the Board's determination, the requirements for that license, certificate, or registration are substantially the same as the requirements for licensure under this Article. (2000-162, s. 1.)

§ 90-656. Provisional license.

The Board may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed the education requirements under G.S. 90-653(a)(3) and has made application to take the examination required under G.S. 90-653(a)(5). A provisional license allows the individual to practice respiratory care under the supervision of a respiratory care practitioner and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires. (2000-162, s. 1.)

§ 90-657. Notification of applicant following evaluation of application.

After evaluation of the application and of any other evidence required from the applicant by the Board, the Board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If the application and evidence is rejected, the notice shall state the reasons for the rejection. (2000-162, s. 1.)

§ 90-658. License as property of the Board; display requirement; renewal; inactive status.

(a) A license issued by the Board is the property of the Board and shall be surrendered by the licensee to the Board on demand.

(b) The licensee shall display the license in the manner prescribed by the Board.

(c) The licensee shall inform the Board of any change of the licensee's address.

(d) The license shall be renewed by the Board annually upon the payment of a renewal fee if, at the time of application for renewal, the applicant is not in violation of this Article and has fulfilled the current requirements regarding continuing education as established by rules adopted pursuant to this Article.

(e) The Board shall notify a licensee at least 30 days in advance of the expiration of his or her license. Each licensee is responsible for renewing his or her license before the expiration date. Licenses that are not renewed automatically lapse.

(f) The Board may provide for the late renewal of an automatically lapsed license upon the payment of a late fee. No late fee renewal may be granted more than five years after a license expires.

(g) In accordance with rules adopted pursuant to this Article, a licensee may request that his or her license be declared inactive and may thereafter apply for active status. (2000-162, s. 1.)

§ 90-659. Suspension, revocation, and refusal to renew a license.

(a) The Board shall take the necessary actions to deny or refuse to renew a license, suspend or revoke a license, or to impose probationary conditions on a licensee or applicant if the licensee or applicant:

(1) Has engaged in any of the following conduct:
  a. Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
  b. Committed an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.
  c. Practiced respiratory care without a license.
  d. Engaged in health care practices that are determined to be hazardous to public health, safety, or welfare.

(2) Was convicted of or entered a plea of guilty or nolo contendere to any crime involving moral turpitude.

(3) Was adjudicated insane or incompetent, until proof of recovery from the condition can be established.

(4) Engaged in any act or practice that violates any of the provisions of this Article or any rule adopted pursuant to this Article, or aided, abetted, or assisted any person in such a violation.

(b) Denial, refusal to renew, suspension, or revocation of a license, or imposition of probationary conditions upon a licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year. (2000-162, s. 1.)

§ 90-660. Expenses; fees.

(a) All salaries, compensation, and expenses incurred or allowed for carrying out the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State.

(b) All monies received by the Board pursuant to this Article shall be deposited in an account for the Board and shall be used for the administration and implementation of this Article. The Board shall establish fees in amounts to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed twenty-five dollars ($25.00).

(2) For examination or reexamination, a fee not to exceed one hundred fifty dollars ($150.00).

(3) For issuance of any license, a fee not to exceed one hundred dollars ($100.00).

(4) For the renewal of any license, a fee not to exceed fifty dollars ($50.00).
(5) For the late renewal of any license, an additional late fee not to exceed fifty dollars ($50.00).
(6) For a license with a provisional or temporary endorsement, a fee not to exceed thirty-five dollars ($35.00).
(7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing. (2000-162, s. 1.)

§ 90-661. Requirement of license.

After October 1, 2002, it shall be unlawful for any person who is not currently licensed under this Article to:
(1) Engage in the practice of respiratory care.
(2) Use the title "respiratory care practitioner".
(3) Use the letters "RCP", "RTT", "RT", or any facsimile or combination in any words, letters, abbreviations, or insignia.
(4) Imply orally or in writing or indicate in any way that the person is a respiratory care practitioner or is otherwise licensed under this Article.
(5) Employ or solicit for employment unlicensed persons to practice respiratory care. (2000-162, s. 1.)

§ 90-662. Violation a misdemeanor.

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor. (2000-162, s. 1.)

§ 90-663. Injunctions.

The Board may apply to the superior court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or restraining order or take other appropriate action. (2000-162, s. 1.)

§ 90-664. Persons and practices not affected.

The requirements of this Article shall not apply to:
(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to or within the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.
(2) A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure in accordance with rules adopted pursuant to this Article.
(3) A respiratory care practitioner serving in the armed forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.
(4) A person who performs only support activities as defined in G.S. 90-648(13). (2000-162, s. 1.)

§ 90-665. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article. (2000-162, s. 1.)

§§ 90-666 through 90-670: Reserved for future codification purposes.

ARTICLE 39.

Safety Profession.

§ 90-671. Definitions.

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). A nonprofit corporation, incorporated in Illinois in 1969, established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional. (2000-110, s. 1; 2000-140, s. 98.)

Editor's Note. — Session Laws 2000-110, s. 2, makes the Article effective January 1, 2001 and applicable to acts committed on or after that date.

This article was originally enacted as Article 37 of Chapter 90 by Session Laws 2000-110, s. 1, and the section enacted as § 90-646. The Article was renumbered as Article 39 of Chapter 90, and the section renumbered as § 90-671, by Session Laws 2000-140, s. 98.

§ 90-672. Unlawful acts; injunctive relief; exclusion.

(a) No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals and has duly authorized the Board to file with the office of the Secretary of State all information required by G.S. 90-674.

(b) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1, and a court may impose a civil penalty against the defendant and shall be empowered to issue a restraining order to prevent further use of the title. (2000-110, s. 1; 2000-140, s. 98.)

Editor's Note. — This section was originally enacted as § 90-647 by Session Laws 2000-110, s. 1, and was renumbered as § 90-672, by Session Laws 2000-140, s. 98, which also provided for the correction of the internal reference in subsection (a).

§ 90-673. Exemptions and limitations.

(a) This Article does not apply to:

(1) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license,

and does not represent himself or herself as an Associate Safety Professional or Certified Safety Professional.

(2) A person who practices within the scope of safety, injury, or illness prevention and does not use the title "Associate Safety Professional" or "Certified Safety Professional", the initials "ASP" or "CSP", or otherwise represents himself or herself to the public as an Associate Safety Professional or Certified Safety Professional.

(3) A person who is licensed as an architect under Chapter 83A of the General Statutes or any person working under the supervision of a licensed architect.

(4) A person who is licensed as a professional engineer under Chapter 89C of the General Statutes or any person working under the supervision of a licensed professional engineer.

(b) Nothing in this Article shall permit the practice of engineering by persons who are not licensed under Chapter 89C of the General Statutes.

(c) Nothing in this Article shall permit the practice of architecture by persons not licensed under Chapter 83A of the General Statutes. (2000-110, s. 1; 2000-140, s. 98.)

Editor's Note. — This section was originally enacted as § 90-648 by Session Laws 2000-110, s. 1, and was renumbered as § 90-673, by Session Laws 2000-140, s. 98.

§ 90-674. Certification registry.

The Board shall file with the Secretary of State the name, address, telephone number, and date of certification for all Associate Safety Professionals and Certified Safety Professionals. The Board shall remit a filing fee of thirty-five dollars ($35.00) to the Secretary of State with each certification filed. All fees paid to the Department shall be used to pay the costs incurred in administering and enforcing this Article. The Board may require this filing fee to be paid by the person whose certification is being filed. The Board shall promptly notify the Secretary of State when a person's certification is revoked or no longer in effect.

The Secretary of State shall maintain a registry of all current Associate Safety Professionals and Certified Safety Professionals as furnished by the Board. (2000-110, s. 1; 2000-140, s. 98.)

Editor's Note. — This section was originally enacted as § 90-649 by Session Laws 2000-110, s. 1, and was renumbered as § 90-674, by Session Laws 2000-140, s. 98.

§§ 90-675 through 90-680: Reserved for future codification purposes.

Chapter 93A.

Real Estate License Law.

Article 1.

Real Estate Brokers and Salespersons.

§ 93A-1. License required of real estate brokers and real estate salespersons.

Effect of Amendments. — Session Laws 2000-140, s. 19(b), substituted "Salespersons" for "Salesmen" in the Article heading.

CASE NOTES

Cited in Bruggeman v. Meditrust Acquisition Co., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 774 (July 5, 2000).

§ 93A-2. Definitions and exceptions.

(a) A real estate broker within the meaning of this Chapter is any person, partnership, corporation, limited liability company, association, or other business entity who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others.

(a1) The term broker-in-charge within the meaning of this Chapter shall mean a real estate broker who has been designated as the broker having responsibility for the supervision of real estate salesperson [salespersons] engaged in real estate brokerage at a particular real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule.

(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.

(c) The provisions of this Chapter shall not apply to and shall not include:

(1) Any person, partnership, corporation, limited liability company, association, or other business entity who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein.

(2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real estate.

(3) The acts or services of an attorney-at-law.

(4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any court.

(5) Any person, while acting as a trustee under a trust agreement, deed of trust or will, or his regular salaried employees.

(6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his employment to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker.

(7) Any owner who personally leases or sells his own property.

(8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried em-

ployees of the housing authority when performing acts authorized in this Chapter as to any property owned or leased by the housing authority. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority. (1957, c. 744, s. 2; 1967, c. 281, s. 1; 1969, c. 191, s. 2; 1975, c. 108; 1983, c. 81, ss. 4, 5; 1985, c. 535, s. 1; 1995, c. 351, s. 20; 1999-229, ss. 2, 3; 1999-409, s. 1.)

Editor's Note. — The bracketed word "salespersons" was inserted in subsection (a1) at the direction of the Revisor of Statutes.

§ 93A-3. Commission created; compensation; organization.

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate brokers or real estate salespersons. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

(b) Members of the Commission shall receive as compensation for each day spent on work for the Commission the per diem, subsistence and travel allowances as provided in G.S. 93B-5. The total expense of the administration of this Chapter shall not exceed the total income therefrom; and none of the expenses of said Commission or the compensation or expenses of any office thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Commission nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Commission may set aside an expense reserve each year not to exceed ten percent (10%) of the previous year's gross income; then any surplus shall go to the general fund of the State of North Carolina.

(c) The Commission shall have power to make reasonable bylaws, rules and regulations that are not inconsistent with the provisions of this Chapter and the General Statutes; provided, however, the Commission shall not make rules or regulations regulating commissions, salaries, or fees to be charged by licensees under this Chapter. The Commission shall adopt a seal for its use, which shall bear thereon the words "North Carolina Real Estate Commission." Copies of all records and papers in the office of the Commission duly certified and authenticated by the seal of the Commission shall be received in evidence in all courts and with like effect as the originals.

(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b).

(e) The Commission shall be entitled to the services of the Attorney General of North Carolina, in connection with the affairs of the Commission or may on approval of the Attorney General, employ an attorney to assist or represent it in the enforcement of this Chapter, as to specific matters, but the fee paid for such service shall be approved by the Attorney General. The Commission may prefer a complaint for violation of this Chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal offices of the State to enforce the provisions of this Chapter and collect the penalties provided therein.

(f) The Commission is authorized to expend expense reserve funds as defined in G.S. 93A-3(b) for the purpose of conducting education and information programs relating to the real estate brokerage business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, seminars, and lectures. (1957, c. 744, s. 3; 1967, c. 281, s. 2; c. 853, s. 1; 1971, c. 86, s. 1; 1979, c. 616, ss. 1, 2; 1983, c. 81, ss. 1, 2, 6-8; 1989, c. 563, s. 1; 1993, c. 419, s. 9; 1999-229, s. 4; 1999-405, s. 2; 1999-431, s. 3.4(a); 2000-140, s. 19(a).)

Editor's Note. —

Session Laws 1999-405, s. 6, as amended by Session Laws 2000-181, s. 2.6(a), provides that William Lackey of Mecklenburg County is appointed to the North Carolina Real Estate Commission for a term expiring July 31, 2002.

Session Laws 1999-431, s. 3.4(b), as amended by Session Laws 2000-181, s. 2.6(b), provides that appointments of the initial members authorized by this section are for terms expiring July 31, 2002.

Session Laws 2000-181, s. 2.6(c), extends the term of Raymond A. Bass, Jr., to the North Carolina Real Estate Commission to July 31, 2004.

Effect of Amendments. —

Session Laws 2000-140, s. 19(a), effective July 21, 2000, in subsection (a), substituted "salespersons" for "salesmen" in the third sentence and substituted "three members" for "two members" twice in the fifth sentence.

§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesperson shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesperson shall be at least 18 years of age. Each applicant for a license as a real estate salesperson shall, within three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least 60 hours of classroom instruction in subjects determined by the Commission, which shall be in addition to the course required for a real estate salesperson license, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker or real estate salesperson shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker or a license as real estate salesperson shall be required to take an oral or written examination. The Commission may allow an applicant to elect to take the examination by computer as an alternative to the written or oral examination and may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of administering the computerized examination. The cost of the computerized examination shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker or real estate salesperson in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee is thirty dollars ($30.00) unless the Commission sets the fee at a higher amount. The Commission may set the license renewal fee at an amount that does not exceed fifty dollars ($50.00). The license renewal fee may not increase by more than five dollars ($5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars ($5.00) in addition to the required renewal fee. In the event a licensee fails to obtain a reinstatement of such license within 12 months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars ($5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars ($10.00).

(d) The Commission is expressly vested with the power and authority to make and enforce any and all reasonable rules and regulations connected with license application, examination, renewal, and reinstatement as shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules and regulations necessary for the approval of real estate schools, instructors, and textbooks and rules that prescribe specific requirements pertaining to instruction, administration, and content of required education courses and programs.

(e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section. (1957, c. 744, s. 4; 1967, c. 281, s. 3; c. 853, s. 2; 1969, c. 191, s. 3; 1973, c. 1390; 1975, c. 112; 1979, c. 614, ss. 2, 3, 6; c. 616, ss. 2-5; 1983, c. 81, ss. 2, 9, 11; c. 384; 1985, c. 535, ss. 2-5; 1995, c. 22, s. 1; 1999-200, s. 1.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" throughout this section.

§ 93A-5. Register of applicants; roster of brokers and salespersons; financial report to Secretary of State.

(a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate brokers and real estate salespersons, which roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers and real estate salespersons holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission. (1957, c. 744, s. 5; 1969, c. 191, s. 4; 1983, c. 81, ss. 2, 9, 12.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salespersons" for "salesmen" throughout this section.

§ 93A-6. Disciplinary action by Commission.

(a) The Commission shall have power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission shall have power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, salespersons, advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any moneys coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker or salesperson in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county.

(b) Following a hearing, the Commission shall also have power to suspend or revoke any license issued under the provisions of this Chapter or to reprimand or censure any licensee when:

(1) The licensee has obtained a license by false or fraudulent representation;

(2) The licensee has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of the criminal offenses of: embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud, or any other offense involving moral turpitude which would reasonably affect the licensee's performance in the real estate business;

(3) The licensee has violated any of the provisions of G.S. 93A-6(a) when selling, leasing, or buying his own property;

(4) The broker's unlicensed employee, who is exempt from the provisions of this Chapter under G.S. 93A-2(c)(6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A-6(a) for which the broker could be disciplined; or

(5) The licensee, who is also a State-licensed or State-certified real estate appraiser pursuant to Chapter 93E of the General Statutes, has violated any provisions of Chapter 93E of the General Statutes and has been reprimanded or has had his appraiser license or certificate suspended or revoked by the Appraisal Board.

(c) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or rules promulgated by the Commission. The superior court shall have the power to grant these injunctions even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the Commission.

(d) Each broker shall maintain complete records showing the deposit, maintenance, and withdrawal of money or other property owned by his principals or held in escrow or in trust for his principals. The Commission may inspect these records periodically, without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a licensee.

(e) When a person or entity licensed under this Chapter is accused of any act, omission, or misconduct which would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commission, may surrender his or its license and all the rights and privileges pertaining to it for a period of time established by the Commission. A person or entity who surrenders his or its license shall not thereafter be eligible for or submit any application for licensure as a real estate broker or salesperson during the period of license surrender. (1957, c. 744, s. 6; 1967, c. 281, s. 4; c. 853, s. 3; 1969, c. 191, s. 5; 1971, c. 86, s. 2; 1973, c. 1112; c. 1331, s. 3; 1975, c. 28; 1979, c. 616, ss. 6, 7; 1981, c. 682, s. 15; 1983, c. 81, s. 13; 1987, c. 516, ss. 1, 2; 1989, c. 563, s. 2; 1993, c. 419, s. 10; 1999-229, s. 6; 2000-149, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" in subsection (e).

§ 93A-9. Licensing nonresidents.

An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers and salespersons from North Carolina. (1957, c. 744, s. 9; 1967, c. 281, s. 5; 1969, c. 191, s. 6; 1971, c. 86, s. 3; 1983, c. 81, s. 2.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" and "salespersons" for "salesman."

§ 93A-11. Reimbursement by real estate independent contractor of brokers' workers' compensation.

(a) Notwithstanding the provisions of G.S. 97-21 or any other provision of law, a real estate broker may include in the governing contract with a real estate salesperson whose nonemployee status is recognized pursuant to section 3508 of the United States Internal Revenue Code, 26 U.S.C. § 3508, an agreement for the salesperson to reimburse the broker for the cost of covering that salesperson under the broker's workers' compensation coverage of the broker's business.

(b) Nothing in this section shall affect a requirement under any other law to provide workers' compensation coverage or in any manner exclude from coverage any person, firm, or corporation otherwise subject to the provisions of Article 1 of Chapter 97 of the General Statutes. (1995, c. 127, s. 1.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" throughout this section.

ARTICLE 2.

Real Estate Recovery Fund.

§ 93A-16. Real Estate Recovery Fund created; payment to fund; management.

(a) There is hereby created a special fund to be known as the "Real Estate Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. Said fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate broker or salesperson licensed under this Chapter.

(b) On September 1, 1979, the Commission shall transfer the sum of one hundred thousand dollars ($100,000) from its expense reserve fund to the Real Estate Recovery Fund. Thereafter, the Commission may transfer to the Real Estate Recovery Fund additional sums of money from whatever funds the Commission may have, provided that, if on December 31 of any year the amount remaining in the fund is less than fifty thousand dollars ($50,000), the Commission may determine that each person or entity licensed under this Chapter, when renewing his or its license, shall pay in addition to his license renewal fee, a fee not to exceed ten dollars ($10.00) per broker and five dollars ($5.00) per salesperson as shall be determined by the Commission for the purpose of replenishing the fund.

(c) The Commission shall invest and reinvest the moneys in the Real Estate Recovery Fund in the same manner as provided by law for the investment of funds by the clerk of superior court. The proceeds from such investments shall be deposited to the credit of the fund.

(d) The Commission shall have the authority to adopt reasonable rules and procedures not inconsistent with the provisions of this Article, to provide for the orderly, fair and efficient administration and payment of monies held in the Real Estate Recovery Fund. (1979, c. 614, s. 1; 1983, c. 81, ss. 1, 2; 1987, c. 516, ss. 3-5.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" in subsections (a) and (b).

§ 93A-17. Grounds for payment; notice and application to Commission.

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate broker or salesperson licensed under this Chapter shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.

(b) For the purposes of this Article, the term "trust funds" shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker or salesperson acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms "licensee", "broker", and "salesperson" shall include only individual persons licensed under this Chapter as brokers and salespersons and shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter. (1979, c. 614, s. 1; 1983, c. 81, ss. 2, 14; 1987, c. 516, s. 6; 1999-229, s. 8.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" and "salespersons" for "salesman" and "salesmen" in subsections (b) and (c).

§ 93A-22. Repayment to fund; automatic suspension of license.

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, the license of the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until he [or she] has repaid in full, plus interest at the legal rate as provided for in G.S. 24-1, the amount paid from the Real Estate Recovery Fund. (1979, c. 614, s. 1; 1983, c. 81, s. 2; 1987, c. 516, s. 14.; 2000-140, s. 19(b).)

Editor's Note. — The bracketed words "or she" were inserted at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" throughout this section.

§ 93A-25. Persons ineligible to recover from fund.

No real estate broker or real estate salesperson who suffers the loss of any commission from any transaction in which he [or she] was acting in the capacity of a real estate broker or real estate salesperson shall be entitled to make application for payment from the Real Estate Recovery Fund for such loss. (1979, c. 614, s. 1.; 2000-140, s. 19(b).)

Editor's Note. — The bracketed words "or she" were inserted at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" throughout this section.

Article 3.

Private Real Estate Schools.

§ 93A-32. Definitions.

As used in this Article:

(1) "Commission" means the North Carolina Real Estate Commission.

(2) "Private real estate school" means any real estate educational entity which is privately owned and operated by an individual, partnership, corporation or association, and which conducts, for a profit or tuition charge, real estate salesperson or broker prelicensing courses pre-

scribed by G.S. 93A-4(a), provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate school. (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, ss. 1, 2; 1989, c. 563, s. 3; 1993, c. 419, s. 11; c. 553, s. 29.1.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" in subdivision (2).

§ 93A-34. License required; application for license; fees; requirements for issuance of license.

(a) No person, partnership, corporation or association shall operate or maintain or offer to operate in this State a private real estate school as defined herein unless a license is first obtained from the Commission in accordance with the provisions of this Article and the rules and regulations promulgated by the Commission under this Article. For licensing purposes, each branch location where a school conducts courses shall be considered a separate school requiring a separate license.

(b) Application for a license shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable application fees not to exceed two hundred fifty dollars ($250.00) for each school location and fifty dollars ($50.00) for each real estate salesperson or broker prelicensing course. The application for a license shall be accompanied by the appropriate fees and shall contain the following:

(1) Name and address of the applicant and the school;
(2) Names, biographical data, and qualifications of director, administrators and instructors;
(3) Description of school facilities and equipment;
(4) Description of course(s) to be offered and instructional materials to be utilized;
(5) Information on financial resources available to equip and operate the school;
(6) Information on school policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct;
(7) Copies of bulletins, catalogues and other official publications;
(8) Copy of bond required by G.S. 93A-36;
(9) Such additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate a school in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, a license shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:

(1) The program of instruction is adequate in terms of quality, content and duration.
(2) The director, administrators and instructors are adequately qualified by reason of education and experience.
(3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.
(4) The school has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements,

registration, tuition and fees, grades, student progress, attendance, and student conduct.

(5) The school publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as being true and correct in content and policy by an authorized school official, and which contains the following information:
  a. Identifying data and publication date;
  b. Name(s) of school and its full-time officials and faculty;
  c. School's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees;
  d. Detailed schedule of tuition and fees;
  e. Detailed course outline of all courses offered.

(6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.

(7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.

(8) The applicant is financially sound and capable of fulfilling educational commitments made to students.

(9) The school's owner(s), director, administrators and instructors are of good reputation and character.

(10) The school complies with all applicable local, State and federal laws and regulations regarding safety and sanitation of facilities.

(11) The school does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.

(12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of schools in a manner which will best serve the public interest. (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, ss. 1, 2; 1989, c. 563, s. 4; 1993, c. 419, s. 12.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" in subsection (b).

§ 93A-35. Duration and renewal of licenses; transfer of school ownership.

(a) All licenses issued shall expire on June 30 following the date of issuance.

(b) Licenses shall be renewable annually on July 1, provided that a renewal application accompanied by the appropriate renewal fees has been filed not later than June 1 in the form and manner prescribed by the Commission, and provided further that the applicant and school are found to be in compliance with the standards established for issuance of an original license. The Commission may by rule set nonrefundable renewal fees not to exceed one hundred twenty-five dollars ($125.00) for each school location and twenty-five dollars ($25.00) for each real estate salesperson or broker prelicensing course.

(c) In the event a school is sold or ownership is otherwise transferred, the license issued to the original owner is not transferable to the new owner. Such new owner must make application for an original license as prescribed by this Article and Commission regulations. (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, ss. 1, 2; 1989, c. 563, s. 5; 1993, c. 419, s. 13.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" in subsection (b).

Article 4.

Time Shares.

§ 93A-40. Registration required of time share projects; real estate salespersons license required.

(a) From and after July 1, 1984, it shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesperson without first obtaining a real estate broker or salesperson license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony. (1983, c. 814, s. 1; 1987, c. 516, s. 16.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salespersons" for "salesmen" in the section heading and "salesperson" for "salesman" twice in subsection (a).

§ 93A-41. Definitions.

When used in this Article, unless the context otherwise requires, the term:

(1) "Commission" means the North Carolina Real Estate Commission;

(2) "Developer" means any person or entity which creates a time share or a time share project or program, purchases a time share for purpose of resale, or is engaged in the business of selling its own time shares and shall include any person or entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling time shares for the developer, but a person who purchases a time share for his or her occupancy, use, and enjoyment shall not be deemed a developer;

(3) "Enrolled" means paid membership in exchange programs or membership in an exchange program evidenced by written acceptance or confirmation of membership;

(4) "Exchange company" means any person operating an exchange program;

(5) "Exchange program" means any opportunity or procedure for the assignment or exchange of time shares among purchasers in the same or other time share project;

(5a) "Independent escrow agent" means a licensed attorney located in this State or a financial institution located in this State;

(6) "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the management of a time share program;

(7) "Person" means one or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;

(7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers and salespersons at the time share project;

(8) "Purchaser" means any person other than a developer or lender who owns or acquires an interest or proposes to acquire an interest in a time share;

(9) "Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership, vacation bond, or a plan or system where the right to use is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use;

(9a) "Time share instrument" means an instrument transferring a time share or any interest, legal or beneficial, in a time share to a purchaser, including a contract, installment contract, lease, deed, or other instrument;

(10) "Time share program" means any arrangement for time shares whereby real property has been made subject to a time share;

(11) "Time share project" means any real property that is subject to a time share program;

(11a) "Time share registrar" means a natural person who is designated by the developer to record or cause time share instruments and lien releases to be recorded and to fulfill the other duties imposed by this Article;

(12) "Time share salesperson" means a person who sells or offers to sell on behalf of a developer a time share to a purchaser; and

(13) "Time share unit" or "unit" means the real property or real property improvement in a project which is divided into time shares and designated for separate occupancy and use. (1983, c. 814, s. 1; 1985, c. 578, s. 1; 1999-229, ss. 13, 14.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salespersons" for "salesmen" in subdivision (7a) and "salesperson" for "salesman" in subdivision (12).

§ 93A-45. Purchaser's right to cancel; escrow; violation.

(a) A developer shall, before transfer of a time share and no later than the date of any contract of sale, provide a prospective purchaser with a copy of a public offering statement containing the information required by G.S. 93A-44. The contract of sale is voidable by the purchaser for five days after the execution of the contract. The contract shall conspicuously disclose the purchaser's right to cancel under this subsection and how that right may be exercised. The purchaser may not waive this right of cancellation. Any oral or written declaration or instrument that purports to waive this right of cancellation is void.

(b) A purchaser may elect to cancel within the time period set out in subsection (a) by hand delivering or by mailing notice to the developer or the time share salesperson. Cancellation under this section is without penalty and upon receipt of the notice all payments made prior to cancellation must be refunded immediately.

(c) Any payments received by a time share developer or time share salesperson in connection with the sale of the time share shall be immediately deposited by such developer or salesperson in a trust or escrow account in an insured bank or savings and loan association in North Carolina and shall remain in such account for 10 days or cancellation by the purchaser, whichever occurs first. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the developer. In lieu of such escrow requirements, the Commission shall have the authority to accept, in its discretion, alternative financial assurances adequate to protect the purchaser's interest during the contract cancellation period, including but not limited to a surety bond, corporate bond, cash deposit or irrevocable letter of credit in an amount equal to the escrow requirements.

(d) If a developer fails to provide a purchaser to whom a time share is transferred with the statement as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from the developer an amount equal to ten percent (10%) of the sales price of the time share not to exceed three thousand dollars ($3,000). A receipt signed by the purchaser stating that he has received the statement required by subsection (a) is prima facie evidence of delivery of such statement. (1983, c. 814, s. 1; 1985, c. 578, s. 4.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman" in subsections (b) and (c).

§ 93A-50. Securities laws apply.

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker or salesperson registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36. (1983, c. 814, s. 1.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" for "salesman."

§ 93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.

(a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed fifteen hundred dollars ($1500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

(b) In the event the Commission finds that there is substantial reason to deny the application for registration as a time share project, the Commission shall notify the applicant that such application has been denied and shall afford the applicant an opportunity for a hearing before the Commission to show cause why the application should not be denied. In all proceedings to deny a certificate of registration, the provisions of Chapter 150B of the General Statutes shall be applicable.

(c) The acceptance by the Commission of an application for registration shall not constitute the approval of its contents or waive the authority of the Commission to take disciplinary action as provided by this Article.

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a late filing fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable. (1983, c. 814, s. 1; 1985, c. 578, s. 5; 1987, c. 827, s. 1; 1999-229, s. 15.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salespersons" for "salesmen" in the first paragraph of subsection (a).

§ 93A-54. Disciplinary action by Commission.

(a) The Commission shall have power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission shall have the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, developer, or project broker; or to fine such developer in the amount of five hundred dollars ($500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact about any time share or time share project;
(2) Making any false promises of a character likely to influence, persuade, or induce;
(3) Pursuing a course of misrepresentation or making of false promises through agents, salesperson, advertising or otherwise;
(4) Failing, within a reasonable time, to account for all money received from others in a time share transaction, and failing to remit such monies as may be required in G.S. 93A-45 of this Article;
(5) Acting as a time share salesperson or time share developer in a manner as to endanger the interest of the public;
(6) Paying a commission, salary, or other valuable consideration to any person for acts or services performed in violation of this Article;
(7) Any other conduct which constitutes improper, fraudulent, or dishonest dealing;
(8) Performing or undertaking to perform any legal service as set forth in G.S. 84-2.1, or any other acts not specifically set forth in that section;
(9) Failing to deposit and maintain in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received from others in a time share transaction as may be required in G.S. 93A-45 of this Article or failing to place with an independent escrow agent the funds of a time share purchaser when required by G.S. 93A-42(c);
(10) Failing to deliver to a purchaser a public offering statement containing the information required by G.S. 93A-44 and any other disclosures that the Commission may by regulation require;
(11) Failing to comply with the provisions of Chapter 75 of the General Statutes in the advertising or promotion of time shares for sale, or failing to assure such compliance by persons engaged on behalf of a developer;
(12) Failing to comply with the provisions of G.S. 93A-48 in furnishing complete and accurate information to purchasers concerning any exchange program which may be offered to such purchaser;
(13) Making any false or fraudulent representation on an application for registration;
(14) Violating any rule or regulation promulgated by the Commission;
(15) Failing to record or cause to be recorded a time share instrument as required by G.S. 93A-42(c), or failing to provide a purchaser the protection against liens required by G.S. 93A-57(a); or
(16) Failing as a time share project broker to exercise reasonable and adequate supervision of the conduct of sales at his project or location by the brokers and salespersons under his control.

(a1) The clear proceeds of fines collected pursuant to subsection (a) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Following a hearing, the Commission shall also have power to suspend or revoke any certificate of registration issued under the provisions of this Article or to reprimand or censure any developer when the registrant has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of the criminal offenses of: embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud, or any other offense involving moral turpitude which would reasonably affect the developer's performance in the time share business.

(c) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person or entity from violating the provisions of this Article or rules promulgated by the Commission. The superior court shall have the power to grant these injunctions even if criminal prosecution has been or may be instituted as a result of the violations, or regardless of whether the person or entity has been registered by the Commission.

(d) Each developer shall maintain or cause to be maintained complete records of every time share transaction including records pertaining to the deposit, maintenance, and withdrawal of money required to be held in a trust or escrow account, or as otherwise required by the Commission, under G.S. 93A-45 of this Article. The Commission may inspect these records periodically without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a registrant.

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender his or its license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders his or its license shall not be eligible for, or submit any application for, licensure as a real estate broker or salesperson or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer. (1983, c. 814, s. 1; 1985, c. 578, ss. 6-10; 1987, c. 516, ss. 17, 18; 1998-215, s. 138.; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, substituted "salesperson" and "salespersons" for "salesman" and "salesmen" throughout this section.

§ 93A-58. Registrar required; criminal penalties; project broker.

(a) Every developer of a registered project shall, by affidavit filed with the Commission, designate a natural person to serve as time share registrar for its registered projects. The registrar shall be responsible for the recordation of time share instruments and the release of liens required by G.S. 93A-42(c) and G.S. 93A-57(a). A developer may, from time to time, change the designated time share registrar by proper filing with the Commission and by otherwise complying with this subsection. No sales or offers to sell shall be made until the registrar is designated for a time share project.

The registrar has the duty to ensure that the provisions of this Article are complied with in a time share project for which he is registrar. No registrar shall record a time share instrument except as provided by this Article.

(b) A time share registrar shall be guilty of a Class I felony if he knowingly or recklessly fails to record or cause to be recorded a time share instrument as required by this Article.

A person responsible as general partner, corporate officer, joint venturer or sole proprietor of the developer of a time share project shall be guilty of a Class I felony if he intentionally allows the offering for sale or the sale of time share to purchasers without first designating a time share registrar.

(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all persons licensed as salespersons at the project or other location and shall directly, personally, and actively supervise all persons licensed as brokers or salespersons at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter. (1985, c. 578, s. 13; 1987, c. 516, s. 20; 1993, c. 539, s. 1289; 1994, Ex. Sess., c. 24, s. 14(c).; 2000-140, s. 19(b).)

Effect of Amendments. — Session Laws 2000-140, s. 19(b), effective July 21, 2000, twice substituted "salespersons" for "salesmen" in subsection (c).

Chapter 95.

Department of Labor and Labor Regulations.

ARTICLE 1.

Department of Labor.

§ 95-1. Department of Labor established.

CASE NOTES

Quoted in Commissioner of Labor v. Dillard's, Inc., 83 F. Supp. 2d 622 (M.D.N.C. 2000).

§ 95-2. Election of Commissioner; term; salary; vacancy.

CASE NOTES

Cited in Commissioner of Labor v. Dillard's, Inc., 83 F. Supp. 2d 622 (M.D.N.C. 2000).

§ 95-4. Authority, powers and duties of Commissioner.

CASE NOTES

Quoted in Commissioner of Labor v. Dillard's, Inc., 83 F. Supp. 2d 622 (M.D.N.C. 2000).

ARTICLE 2A.

Wage and Hour Act.

§ 95-25.1. Short title and legislative purpose.

CASE NOTES

Applied in Martin v. Pomeroy Computer Resources, Inc., 87 F. Supp. 2d 496 (W.D.N.C. 1999).

§ 95-25.6. Wage payment.

CASE NOTES

The trial court did not err in allowing the plaintiff to amend his complaint to state a violation of the Act where the defendants clearly failed to pay him commissions earned as required by this section and § 95-25.7; and where the plaintiff raised the violation in the pretrial order which defendants signed and, thereby, put them on notice of the claims against them, negating a claim of prejudice as a result of the amendment. Fulk v. Piedmont Music Ctr., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 643 (June 20, 2000).

§ 95-25.7. Payment to separated employees.

CASE NOTES

Forfeiture of Bonus Upon Termination of Employment. — Where plaintiff's employment was terminated before the end of the plan year and Defendant refused to pay any bonus, although there was no notification to plaintiff that termination of his employment could result in forfeiture of his bonus, the decision to require forfeiture of the bonus did not constitute a change in the plan; therefore, no notice was required. McCullough v. Branch Banking & Trust Co., — N.C. App. —, 524 S.E.2d 569, 2000 N.C. App. LEXIS 17 (2000).

The trial court did not err in allowing the plaintiff to amend his complaint to state a violation of the Act where the defendants clearly failed to pay him commissions earned as required by § 95-25.6 and this section; and where the plaintiff raised the violation in the pretrial order which defendants signed and, thereby, put them on notice of the claims against them, negating a claim of prejudice as a result of the amendment. Fulk v. Piedmont Music Ctr., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 643 (June 20, 2000).

§ 95-25.13. Notification, posting, and records.

CASE NOTES

Forfeiture of Bonus Upon Termination of Employment. — Where plaintiff's employment was terminated before the end of the plan year and Defendant refused to pay any bonus, although there was no notification to plaintiff that termination of his employment could result in forfeiture of his bonus, the decision to require forfeiture of the bonus did not constitute a change in the plan; therefore, no notice was required. McCullough v. Branch Banking & Trust Co., — N.C. App. —, 524 S.E.2d 569, 2000 N.C. App. LEXIS 17 (2000).

§ 95-25.22. Recovery of unpaid wages.

CASE NOTES

Because the Act does not require a finding that defendants acted in bad faith in order for attorney's fees to be awarded to plaintiff, the court acted within its discretion by awarding the plaintiff/piano salesman attorney's fees. Fulk v. Piedmont Music Ctr., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 643 (June 20, 2000).

Cited in Aerial Images, Inc. v. Anderson, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 3777 (E.D.N.C. February 21, 2000).

Article 5A.

Regulation of Private Personnel Services.

§ 95-47.6. Prohibited acts.

CASE NOTES

Stated in Gray v. North Carolina Ins. Underwriting Ass'n, — N.C. —, 529 S.E.2d 676, 2000 N.C. LEXIS 437 (2000).

Article 20.

Controlled Substance Examination Regulation.

§ 95-230. Purpose.

CASE NOTES

Quoted in Garner v. Rentenbach Constructors Inc., 350 N.C. 573, 515 S.E.2d 438 (1999).

§ 95-231. Definitions.

CASE NOTES

Quoted in Garner v. Rentenbach Constructors Inc., 350 N.C. 573, 515 S.E.2d 438 (1999).

§ 95-232. Procedural requirements for the administration of controlled substance examinations.

CASE NOTES

Effect of Unknowing Use of Nonapproved Laboratory on Discharge of Employee. — The termination of plaintiff's employment based on a positive reading of a drug test did not constitute a wrongful discharge in violation of this section, and failure to use an approved laboratory did not automatically trigger the public policy exception to the employment-at-will doctrine, where plaintiff failed to demonstrate that defendant/employer knew that the laboratory did not qualify as an approved laboratory. Garner v. Rentenbach Constructors Inc., 350 N.C. 573, 515 S.E.2d 438 (1999).

§ 95-234. Violation of controlled substance examination regulations; civil penalty.

CASE NOTES

Cited in Garner v. Rentenbach Constructors Inc., 350 N.C. 573, 515 S.E.2d 438 (1999).

Article 21.

Retaliatory Employment Discrimination.

§ 95-240. Definitions.

CASE NOTES

Commissioner of Labor Not a Citizen for Diversity Purposes. — The Commissioner of Labor, in carrying out his statutory duties on behalf of the state, is the alter ego of the state and as such cannot be considered a citizen for diversity purposes. Commissioner of Labor v. Dillard's, Inc., 83 F. Supp. 2d 622 (M.D.N.C. 2000).

§ 95-241. Discrimination prohibited.

CASE NOTES

Quoted in Commissioner of Labor v. Dillard's, Inc., 83 F. Supp. 2d 622 (M.D.N.C. 2000); Smallwood v. Perdue Farms, Inc., — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 3770 (E.D.N.C. February 21, 2000).

§ 95-242. Complaint; investigation; conciliation.

CASE NOTES

Quoted in Commissioner of Labor v. Dillard's, Inc., 83 F. Supp. 2d 622 (M.D.N.C. 2000).

§ 95-243. Civil action.

CASE NOTES

Failure to Meet Delayed Service Requirements. — Statute of limitations barred plaintiff's retaliatory employment discrimination claim under this section, when he failed to meet the requirements of delayed service under § 1A-1, Rule 3(a). Telesca v. SAS Inst. Inc., 133 N.C. App. 653, 516 S.E.2d 397 (1999), cert. denied, 351 N.C. 120, — S.E.2d — (1999).

Cited in Commissioner of Labor v. Dillard's, Inc., 83 F. Supp. 2d 622 (M.D.N.C. 2000).

Chapter 96.

Employment Security.

Article 1.

Employment Security Commission.

§ 96-4. Administration.

(a) Duties and Powers of Commission. — It shall be the duty of the Commission to administer this Chapter. The Commission shall meet at least once in each 60 days and may hold special meetings at any time at the call of the chairman or any three members of the Commission, and the Commission shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable in the administration of this Chapter. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Chapter, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Chapter, and shall have an official seal which shall be judicially noticed. The chairman of said Commission shall, except as otherwise provided by the Commission, be vested with all authority of the Commission, including the authority to conduct hearings and make decisions and determinations, when the Commission is not in session and shall execute all orders, rules and regulations established by said Commission. Not later than November 20 preceding the meeting of the General Assembly, the Commission shall submit to the Governor a report covering the administration and operation of this Chapter during the preceding biennium, and shall make such recommendation for amendments to this Chapter as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the legislature, and make recommendations with respect thereto.

(b) Regulations and General and Special Rules. — General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given by mail to the last known address in cases of special rules, or by publication as herein provided, and by one publication as herein provided as to general rules. The Commission shall not take final action on a general or special rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), until 60 days after the Office of State Budget, Planning and Management has prepared a fiscal note for the rule. General rules shall become effective 10 days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Before the adoption, amendment, or repeal of any permanent regulation, the Commission shall publish notice of the public hearing and offer any person an opportunity to present data, opinions, and arguments. The notice shall be published in one or more newspapers of general circulation in this State at least 10 days before the public hearing and at least 20 days prior to the proposed effective date of the proposed permanent regulation. The published notice of public hearing shall include the time and place of the public hearing; a statement of the manner in which data, opinions, and arguments may be submitted to or before the Commission; a statement of the terms or substance of the proposed regulation; a statement of whether a fiscal note has been or will be prepared for the proposed regulation; and the proposed effective date of the regulation. Any permanent regulation adopted after following the above procedure shall become effective on its effective date and after it is published in the manner provided for in subsection (c) as well as such additional publication as the Commission deems appropriate. Additionally, the Commission shall provide notice of adoption by mail to the last known addresses of all persons who submitted data, opinions, or arguments to the Commission with respect to the regulation. Temporary regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission but shall remain in force for no longer than 120 days.

(c) Publication. — The Commission shall cause to be printed for distribution to the public the text of this Chapter, the Commission's regulations and general rules, and any other material the Commission deems relevant and suitable, and shall furnish the same to any person upon application therefor. All publications printed shall comply with the requirements of G.S. 143-170.1.

(d) Personnel. — Subject to other provisions of this Chapter, the Commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. It shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments not to exceed six months in duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such examinations. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis. The Commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this Chapter, and may, in its discretion, bond any person handling moneys or signing checks hereunder.

(e) Advisory Councils. — The Governor shall appoint a State Advisory Council composed of men and women representing employers, employees, and the general public, in equal numbers. The Chairman of the Commission shall be a member of the State Advisory Council and shall serve as its chairman. There shall be 15 members of the Council (other than its chairman) who shall each be appointed for a term of four years. A quorum of the State Advisory Council shall consist of the chairman, or such appointed member as he may designate, plus one half of the total appointed members. The function of the Council shall be to aid the Commission in formulating policies and discussing problems related to the administration of this Chapter. Each member of the State Advisory Council attending meetings of the Council shall be paid the same amount per diem for his services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office, and his actual mileage and subsistence at the same rate allowed to State officials.

(f) Employment Stabilization. — The Commission, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(g) Records and Reports. —

(1) Each employing unit shall keep true and accurate employment records, containing such information as the Commission may prescribe. Such records shall be open to inspection and be subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. Any employing unit doing business in North Carolina shall make available in this State to the Commission, such information with respect to persons, firms, or other employing units performing services for it which the Commission deems necessary in connection with the administration of this Chapter. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration of this Chapter.

(2) If the Commission finds that any employer has failed to file any report or return required by this Chapter or any regulation made pursuant hereto, or has filed a report which the Commission finds incorrect or insufficient, the Commission may make an estimate of the information required from such employer on the basis of the best evidence reasonably available to it at the time, and make, upon the basis of such estimate, a report or return on behalf of such employer, and the report or return so made shall be deemed to be prima facie correct, and the Commission may make an assessment based upon such report and proceed to collect contributions due thereon in the manner as set forth in G.S. 96-10(b) of this Chapter: Provided, however, that no such report or return shall be made until the employer has first been given at least 10 days' notice by registered mail to the last known address of such employer: Provided further, that no such report or return shall be used as a basis in determining whether such employing unit is an employer within the meaning of this Chapter.

(h) Oaths and Witnesses. — In the discharge of the duties imposed by this Chapter, the chairman and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Chapter.

(i) Subpoenas. — In case of contumacy by, or refusal to obey a subpoena issued to any person by the Commission or its authorized representative, any clerk of a superior court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission, or its duly authorized representatives, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, or its duly authorized representatives, there to produce evidence if so ordered, or there to give testimony touching upon the matter under investigation or in question; and any failure to obey such order of the said clerk of superior court may be punished by the said clerk of superior court as a contempt of said court. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, or other records in obedience to a subpoena of the Commission, shall be punished by a fine of not more than fifty dollars ($50.00) or by imprisonment for not longer than 30 days.

(j) Protection against Self-Incrimination. — No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission or in obedience to the subpoena of the Commission or any member thereof, or any duly authorized representative of the Commission, in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(k) State-Federal Cooperation. — In the administration of this Chapter, the Commission shall cooperate, to the fullest extent consistent with the provisions of this Chapter, with the federal agency, official, or bureau fully authorized and empowered to administer the provisions of the Social Security Act approved August 14, 1935, as amended, shall make such reports, in such form and containing such information as such federal agency, official, or bureau may from time to time require, and shall comply with such provisions as such federal agency, official, or bureau may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by such agency, official, or bureau governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this Chapter. The Commission shall further make its records available to the Railroad Retirement Board, created by the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies thereof as the Board shall deem necessary for its purposes in accordance with the provisions of section 303 (c) of the Social Security Act as amended.

Upon request therefor, the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits, and such recipient's rights to further benefits under this Chapter.

The Commission is authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this Chapter as it deems necessary or appropriate to facilitate the administration of any employment security or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this State by the agency charged with the administration of such other employment security or public employment service law.

The Commission shall fully cooperate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would, in its judgment, tend to effect complete or substantial federalization of State unemployment insurance funds or State employment security programs.

(*l*) Reciprocal Arrangements. —

(1) The Commission is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

a. Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states

1. In which any part of such individual's service is performed or
2. In which such individual has his residence or
3. In which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by the employing unit, approved by the agency charged with the administration of such state's employment security law, pursuant to which the services performed by such individual for such employing unit are deemed to be performed entirely within such state.

b. Combining wage credits. — The Commission shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this Chapter with his wages and employment covered under one or more laws of the federal government and the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for (1) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and (2) avoiding the duplicate use of wages and employment by reason of such combining.

c. The services of the Commission as agent may be made available to other states in taking interstate claims for such states.

d. Contributions due under this Chapter with respect to wages for insured work shall for the purposes of G.S. 96-10 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the Commission finds will be fair and reasonable as to all affected interests.

e. The services of the Commission may be made available to such other agencies to assist in the enforcement and collection of judgments of such other agencies.

f. The services on vessels engaged in interstate or foreign commerce for a single employer, wherever performed, shall be deemed performed within this State or within such other state.

g. Benefits paid by agencies of other states may be reimbursed to such agencies in cases where services of the claimant were "employment" under this Chapter and contributions have been paid by the employer to this agency on remuneration paid for such services; provided the amount of such reimbursement shall not exceed the amount of benefits such claimant would have been entitled to receive under the provisions of this Chapter.

(2) Reimbursements paid from the fund pursuant to subparagraphs b and c of subdivision (1) of this subsection shall be deemed to be benefits for the purpose of G.S. 96-6, 96-9, 96-12 and 96-12.01. The Commission is authorized to make to other states or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision (1) of this subsection.

(3) To the extent permissible under the laws and Constitution of the United States, the Commission is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this Chapter and facilities and services provided under the employment security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the Employment Security Law of this State or under a similar law of such government.

(m) The Commission after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and subdivisions thereunder. The Commission shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Employment Security Law including the right to determine the amount of contributions, if any, which may be due the Commission by any employer. Hearings may be before the Commission or a Deputy Commissioner and shall be held in the central office of the Commission or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Commission and a determination of the law applicable to that evidence. The Commission shall provide for the taking of evidence by a hearing officer who shall be a member of the legal staff of the Commission. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the Commission and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the Commission for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employing unit or employer either resides, maintains a place of business, or conducts business; however, the Commission may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the Commission or a Deputy Commissioner any party affected thereby shall be entitled to an appeal to the superior court. Before such party shall be allowed to appeal, he shall within 10 days after notice of such decision or determination, file with the Commission exceptions to the decision or the determination of the Commission, which exceptions will state the grounds of objection to such decision or determination. If any one of such exceptions shall be overruled then such party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the Commission, the appeal shall be to the superior court in term time but the decision or determination of the Commission upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the Commission, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within 10 days after the notice of appeal has been served, file with the Commission exceptions to the decision or determination overruling the exception which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the Commission shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or, unless the appellant objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the 30-day period specified herein may be extended by agreement of parties. If there be no exceptions to any facts as found by the Commission the facts so found shall be binding upon the court and it shall be heard by the judge at chambers at some place in the district, above mentioned, of which all parties shall have 10 days' notice.

(n) The cause shall be entitled "State of North Carolina on Relationship of the Employment Security Commission of North Carolina against (here insert name of appellant)," and if there are exceptions to any facts found by the Commission it shall be placed on the civil issue docket of such court and shall have precedence over other civil actions except those described in G.S. 96-10(b), and such cause shall be tried under such rules and regulations as are prescribed for the trial of other civil causes. By consent of all parties the appeal may be held and determined at chambers before any judge of a district in which the appellant either resides, maintains a place of business or conducts business, or said appeal may be heard before any judge holding court therein, or in any district in which the appellant either resides, maintains a place of business or conducts business. Either party may appeal to the appellate division from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that if an appeal shall be taken on behalf of the Employment Security Commission of North Carolina it shall not be required to give any undertaking or make any deposit to secure the cost of such appeal and such court may advance the cause on its docket so as to give the same a speedy hearing.

(o) The decision or determination of the Commission when docketed in the office of the clerk of the superior court of any county and when properly indexed and cross-indexed shall have the same force and effect as a judgment rendered by the superior court, and if it shall be adjudged in the decision or determination of the Commission that any employer is indebted to the Commission for contributions, penalties and interest or either of the same, then said judgment shall constitute a lien upon any realty owned by said employer in the county only from the date of docketing of such decision or determination in the office of the clerk of the superior court and upon personalty owned by said employer in said county only from the date of levy on such personalty, and upon the execution thereon no homestead or personal property exemptions shall be allowed; provided, that nothing herein shall affect any rights accruing to the Commission under G.S. 96-10. The provisions of this section, however, shall not have the effect of releasing any liens for contributions, penalties or interest, or either of the same, imposed by other law, nor shall they have the effect of postponing the payment of said contributions, penalties or interest, or depriving the said Employment Security Commission of North Carolina of any priority in order of payment provided in any other statute under which payment of the said contributions, penalties and interest or either of the same may be required. The superior court or any appellate court shall have full power and authority to issue any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of said decision or determination of the Commission or to collect any amount of contribution, penalty or interest adjudged to be due the Commission by said decision or determination. In case of an appeal from any decision or determination of the Commission to the superior court or from any judgment of the superior court to the appellate division all proceedings to enforce said judgment, decision, or determination shall be stayed until final determination of such appeal but no proceedings for the collection of any amount of contribution, penalty or interest due on same shall be suspended or stayed unless the employer or party adjudged to pay the same shall file with the clerk of the superior court a bond in such amount not exceeding double the amount of contribution, penalty, interest or amount due and with such sureties as the clerk of the superior court deems necessary conditioned upon the payment of the contribution, penalty, interest or amount due when the appeal shall be finally decided or terminated.

(p) The conduct of hearings shall be governed by suitable rules and regulations established by the Commission. The manner in which appeals and hearings shall be presented and conducted before the Commission shall be governed by suitable rules and regulations established by it. The Commission shall not be bound by common-law or statutory rules of evidence or by technical or formal rules of procedure but shall conduct hearings in such manner as to ascertain the substantial rights of the parties.

(q) Notices of hearing shall be issued by the Commission or its authorized representative and sent by registered mail, return receipt requested, to the last known address of any employing unit, employers, persons, or firms involved. The notice shall be sent at least 10 days prior to the hearing date and shall contain notification of the place, date, hour, and purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the Commission or its authorized representative and shall order him to appear at the time, date and place shown thereon. Any bond or other undertaking required to be given in order to suspend or stay any execution shall be given payable to the Employment Security Commission of North Carolina. Any such bond or other undertaking may be forfeited or sued upon as are any other undertakings payable to the State.

(r) None of the provisions or sections herein set forth in subsections (m)-(q) shall have the force and effect nor shall the same be construed or interpreted as repealing any of the provisions of G.S. 96-15 which provide for the procedure and determination of all claims for benefits and such claims for benefits shall be prosecuted and determined as provided by said G.S. 96-15.

(s) Upon a finding of good cause, the Commission shall have the power in its sole discretion to forgive, in whole or in part, any overpayment arising under G.S. 96-18(g)(2).

(t) Confidentiality of Records, Reports, and Information Obtained from Claimants, Employers, and Units of Government.

(1) Confidentiality of Information Contained in Records and Reports. — (i) Except as hereinafter otherwise provided, it shall be unlawful for any person to obtain, disclose, or use, or to authorize or permit the use of any information which is obtained from any employing unit, individual, or unit of government pursuant to the administration of this Chapter or G.S. 108A-29. (ii) Any claimant or employer or their legal representatives shall be supplied with information from the records of the Employment Security Commission to the extent neces-

sary for the proper presentation of claims or defenses in any proceeding under this Chapter. Notwithstanding any other provision of law, any claimant may be supplied, subject to restrictions as the Commission may by regulation prescribe, with any information contained in his payment record or on his most recent monetary determination, and any individual, as well as any interested employer, may be supplied with information as to the individual's potential benefit rights from claim records. (iii) Subject to restrictions as the Commission may by regulation provide, information from the records of the Employment Security Commission may be made available to any agency or public official for any purpose for which disclosure is required by statute or regulation. (iv) The Commission may, in its sole discretion, permit the use of information in its possession by public officials in the performance of their public duties. (v) The Commission shall release the payment and the amount of unemployment compensation benefits upon receipt of a subpoena in a proceeding involving child support. (vi) The Commission shall furnish to the State Controller any information the State Controller needs to prepare and publish a comprehensive annual financial report of the State or to track debtors of the State.

(2) Job Service Information. — (i) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the North Carolina State Employment Service Division from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program. Provided, however, that if all interested parties waive in writing the right to hold such information confidential, the information may be disclosed and used but only for those purposes that the parties and the Commission have agreed upon in writing. (ii) The Employment Service Division shall make public, through the newspapers and any other suitable media, information as to job openings and available applicants for the purpose of supplying the demand for workers and employment. (iii) The Labor Market Information Division shall collect, collate, and publish statistical and other information relating to the work under the Commission's jurisdiction; investigate economic developments, and the extent and causes of unemployment and its remedies with the view of preparing for the information of the General Assembly such facts as in the Commission's opinion may make further legislation desirable. (iv) Except as provided by Commission regulation, any information published pursuant to this subsection (II) shall not be published in any manner revealing the identity of the applicant or the employing unit.

(3) Penalties for Disclosure or Improper Use. — Any person violating any provision of this section may be fined not less than twenty dollars ($20.00) nor more than two hundred dollars ($200.00), or imprisoned for not longer than 90 days, or both.

(4) Regulations. — The Commission may provide by regulation for procedures by which requests for information will be considered and the methods by which such information may be disclosed. The Commission is authorized to provide by regulation for the assessment of fees for securing and copying information released under this section.

(5) Privileged Status of Letters and Reports and Other Information Relating to Administration of this Chapter. — All letters, reports, communication, or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee to each other or to the Commission or any of its agents, representatives, or

employees, which letters, reports, or other communication shall have been written, sent, delivered, or made in connection with the requirements of the administration of this Chapter, shall be absolutely privileged communication in any civil or criminal proceedings except proceedings pursuant to or involving the administration of this Chapter and except proceedings involving child support and only for the purpose of establishing the payment and amount of unemployment compensation benefits. Nothing in this subdivision shall be construed to prohibit the Commission, upon written request and on a reimbursable basis only, from disclosing information from the records of a proceeding before an appeals referee, deputy commissioner, or other hearing officer by whatever name called, compiled for the purpose of resolving issues raised pursuant to the Employment Security Law.

(6) Nothing in this subsection (t) shall operate to relieve any claimant or employing unit from disclosing any information required by this Chapter or by regulations promulgated thereunder.

(7) Nothing in this subsection (t) shall be construed to prevent the Commission from allowing any individual or entity to examine and copy any report, return, or any other written communication made by that individual or entity to the Commission, its agents, or its employees.

(7a) Nothing in this subsection (t) shall be construed to prevent the Commission from disclosing, upon request and on a reimbursable basis only, to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency as defined in Section 303(i)(4) of the Social Security Act, any information from the records of the Employment Security Commission with respect to individuals applying for or participating in any housing assistance program administered by the Department of Housing and Urban Development who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development. It is the purpose of this paragraph to assure the Employment Security Commission's compliance with Section 303(i)(1) of the Social Security Act and it shall be construed accordingly.

(7b) Nothing in this subsection (t) shall be construed to prevent the Commission from disclosing, upon request and on a reimbursable basis, to the Secretary of Health and Human Services, any information from the records of the Employment Security Commission as may be required by Section 303(h)(1) of the Social Security Act. It is the purpose of this paragraph to assure compliance with Section 303(h)(1) of the Social Security Act and it shall be construed accordingly.

(8) Any finding of fact or law, judgment, determination, conclusion or final order made by an adjudicator, appeals referee, commissioner, the Commission or any other person acting under authority of the Commission pursuant to the Employment Security Law is not admissible or binding in any separate or subsequent action or proceeding, between a person and his present or previous employer brought before an arbitrator, court or judge of this State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

Provided, however, any finding of fact or law, judgment, determination, conclusion, or final order made by an adjudicator, appeals referee, commissioner, the Commission or any other person acting under the authority of the Commission pursuant to the Employment Security Law shall be admissible in proceedings before the North Carolina Industrial Commission.

(u) Service of process upon the Commission in any proceeding instituted before an administrative agency or court of this State shall be pursuant to G.S. 1A-1, Rule 4(j)(4); however, notice of the requirement to withhold unemployment compensation benefits pursuant to G.S. 110-136.2(f) shall be served upon the process agent for the Employment Security Commission by regular or courier mail.

(v) Advisory rulings may be made by the Commission with respect to the applicability of any statute or rule administered by the Commission, as follows:

(1) All requests for advisory rulings shall be made in writing and submitted to the Chief Counsel. Such requests shall state the facts and statutes or rules on which the ruling is requested.

(2) The Chief Counsel may request from any person securing an advisory ruling any additional information that is necessary. Failure to supply such additional information shall be cause for the Commission to decline to issue an advisory ruling.

(3) The Commission may decline to issue an advisory ruling if any administrative or judicial proceeding is pending with the person requesting the ruling on the same factual grounds. The Commission may decline to issue an advisory ruling if such a ruling may harm the Commission's interest in any litigation in which it is or may be a party.

(4) All advisory rulings shall be issued no later than 30 days from the date all information necessary to make a ruling has been received by the Chief Counsel.

(5) No advisory ruling shall be binding upon the Commission provided that in any subsequent enforcement action initiated by the Commission, any person's reliance on such ruling shall be considered in mitigation of any penalty sought to be assessed. (Ex. Sess. 1936, c. 1, s. 11; 1939, c. 2; c. 27, s. 8; c. 52, s. 5; cc. 207, 209; 1941, c. 279, ss. 4, 5; 1943, c. 377, ss. 16-23; 1945, c. 522, ss. 1-3; 1947, c. 326, ss. 1, 3, 4, 26; c. 598, ss. 1, 6, 7; 1949, c. 424, s. 1; 1951, c. 332, ss. 1, 18; 1953, c. 401, ss. 1-4; 1955, c. 385, ss. 1, 2; c. 479; 1957, c. 1059, s. 1; 1969, c. 44, s. 63; c. 575, ss. 1, 2; 1971, c. 673, ss. 1, 2; 1977, c. 727, ss. 8-10; 1979, c. 660, s. 2; 1979, 2nd Sess., c. 1212, s. 2; 1981, c. 160, s. 1; 1983, c. 625, s. 16; 1983 (Reg. Sess., 1984), c. 995, s. 6; 1985, c. 197, ss. 1, 6, 7; c. 552, s. 23; 1987, c. 273; c. 764, ss. 4, 4.1, 5; 1989, c. 583, ss. 1, 2; c. 707, ss. 1, 2; 1991, c. 603, s. 1; c. 723, s. 3; 1993, c. 343, s. 1; c. 512, s. 3; 1995, c. 507, s. 27.8(n); 1999-340, s. 10; 2000-140, s. 93.1(a).)

Effect of Amendments. —

Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (b).

CASE NOTES

Authority of Chairman of Commission. —

Because the chairman of the ESC had the authority to staff and make personnel decisions in the ESC, she had the authority, pursuant to § 126-5(e), to dismiss plaintiff from his exempt policymaking position within the ESC. Carrington v. Brown, — N.C. App. —, 525 S.E.2d 230, 2000 N.C. App. LEXIS 104 (2000).

§ 96-5. Employment Security Administration Fund.

Editor's Note. —

Session Laws 1999-237, s. 16.14(b), as amended by Session Laws 2000-67, s. 14.4, provides that notwithstanding G.S. 96-5(f), the following sums are appropriated from the Worker Training Trust Fund to the following agencies for the 1999-2000 and the 2000-2001 fiscal years:

(1) $2,400,000 for the 1999-2000 fiscal year and $2,300,000 for the 2000-2001 fiscal year to the Department of Commerce, Division of Employment and Training, for the Employment and Training Grant Program;
(2) $1,000,000 for each fiscal year to the Department of Labor for customized training of the unemployed and the working poor for specific jobs needed by employers through the Department's Bureau for Training Initiatives;
(3) $2,046,000 for the 1999-2000 fiscal year and $1,746,000 for the 2000-2001 fiscal year to the Community Colleges System Office to continue the Focused Industrial Training Program;
(4) $225,000 for each fiscal year to the Employment Security Commission for the State Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs;
(5) $400,000 for each fiscal year to the Community Colleges System Office for a training program in intrepreneurial skills to be operated by North Carolina REAL Enterprises;
(6) $60,000 for each fiscal year to the Office of State Budget and Management (now the Office of State Budget, Planning, and Management) to maintain compliance with G.S. Chapter 96, which directs the Office of State Budget and Management (now the Office of State Budget, Planning, and Management) to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs;
(7) $1,000,000 for each fiscal year to the Department of Labor to expand the Apprenticeship Program, with the intent that the appropriation of these funds will result in the Department of Labor serving a benchmark performance level of 10,000 adult and youth apprentices by the year 2000 and maintained or improved thereafter;
(8) $100,00 for the 2000-2001 fiscal year to the Community Colleges System Office for the Hosiery Technology Center; and
(9) $100,000 for the 2000-2001 fiscal year to the Community Colleges System Office for the Composites Testing and Training Center.

Session Laws 1999-237, s. 16.14(c), as enacted by Session Laws 2000-67, s. 14.4, directs the State Treasurer's Office to deposit the June 2000 interest earnings from the Employment Security Commission Reserve Fund to the Worker Training Trust Fund for the 2000-2001 fiscal year.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Article 2.

Unemployment Insurance Division.

§ 96-9. Contributions.

(a) Payment. —

(1) Except as provided in subsection (d) hereof, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Chapter, with respect to wages for employment (as defined in G.S. 96-8(6)). Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ. Contributions shall become due on and shall be paid on or before the last day of the month following the close of the calendar quarter in which such wages are paid and such contributions shall be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided, further, that if the Commission shall be

advised by its duly authorized officers or agents that the collection of any contribution under any provision of this Chapter will be jeopardized by delay, the Commission may, whether or not the time otherwise prescribed by law for making returns and paying such tax has expired, immediately assess such contributions (together with all interest and penalties, the assessment of which is provided for by law). Such contributions, penalties and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Commission for the payment thereof. Upon failure or refusal to pay such contributions, penalties, and interest, it shall be lawful to make collection thereof as provided by G.S. 96-10 and subsections thereunder and such collection shall be lawful without regard to the due date of contributions herein prescribed, provided, further, that nothing in this paragraph shall be construed as permitting any refund of contributions heretofore paid under the law and regulations in effect at the time such contributions were paid.

(2) In the payment of any contributions a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) Benefits paid employees of this State shall be financed and administered in accordance with the provisions and conditions of G.S. 96-9(d) required for nonprofit organizations; except as provided by suitable regulations which may be adopted by the Commission. The Department of Administration shall make an election with respect to financing all such benefits.

(4) Political subdivisions of this State may finance benefits paid to employees either by coming under the experience rating program provided in G.S. 96-9(b) or by coming into the program on a reimbursement basis in accordance with the provisions and conditions of G.S. 96-9(f). Any election made shall be binding upon the political subdivision so electing for a period of four years.

(5) An employer is not required to pay contributions on wages the employer pays to an individual in a calendar year in excess of the taxable wage base for that calendar year. The taxable wage base is the greater of (i) the federally required taxable wage base or (ii) the product resulting from multiplying the average yearly insured wage by fifty percent (50%), rounded to the nearest multiple of one hundred dollars ($100.00). The average yearly insured wage is the average weekly insured wage on the applicable computation date multiplied by 52. The following wages are included in determining whether the amount of wages paid to an individual in a single calendar year exceeds the taxable wage base:

a. Wages paid to an individual in this State by an employer that made contributions in another state upon the wages paid to the individual because the work was performed in the other state.

b. Wages paid by a successor employer to an individual that meets both of the following conditions: (i) the individual was an employee of the predecessor and was taken over as an employee by the successor as a part of the organization acquired and (ii) the predecessor employer has paid contributions on the wages paid to the individual while in the predecessor's employ during the year of acquisition and the account of the predecessor is transferred to the successor in accordance with G.S. 96-9(c)(4)a.

(6) If the amount of the contributions shown to be due after all credits is less than five dollars ($5.00), no payment need be made. If an

employer has paid contributions, penalties, and/or interest in excess of the amount due, this shall be considered an overpayment and refunded provided no other debts are owed to the Commission by the employer. Overpayments of less than five dollars ($5.00) shall be refunded only upon receipt by the Chairman of a written demand for such refund from the employer. Nothing herein shall be construed to change or extend the limitation set forth in G.S. 96-10(e), (f), and (i).

(7) Effective with the quarter ending September 30, 1999, every employer with 100 or more employees, and every person or organization that, as agent, reports wages on a total of 100 or more employees on behalf of one or more subject employers, shall file that portion of the "Employer's Quarterly Tax and Wage Report that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the Commission.

For failure of an employer to comply with this subdivision, there shall be added to the amount required to be shown as tax in the reports a penalty of twenty-five dollars ($25.00). For failure of an agent to comply with this subdivision, the Commission may deny the agent the right to report wages and file reports for the employer for whom the agent filed an improper report for a period of one year following the calendar quarter in which that agent filed the improper report. The Commission may reduce or waive a penalty for good cause shown.

(8) An employer who has filed reports with the Commission for at least three consecutive years and has not been liable for quarterly contributions under subdivision (6) of this subsection during the preceding calendar year may be given permission by the Chair of the Commission to file reports once a year on or before the last day of the month following the close of the calendar year in which the wages are paid. Permission to file a report annually may be revoked if the employer is found liable to the Commission for quarterly contributions under subdivision (6) of this subsection.

An employer who is granted permission to file annual reports must comply with 20 C.F.R. § 603.21 so that reporting of wages and employment status are as effective and timely as the quarterly wage reporting system. This compliance includes the reporting of all changes in employment status and in wages of an employee to the Commission within 14 days of the occurrence and responding to all inquiries from the Commission as to wages paid to an employee in a year in which the employer is reporting on an annual basis within 14 days of the postmark of the inquiry. If an employer does not report or respond to an inquiry within 14 days, then the Commission will estimate wages paid to an employee based on the last report the employer filed with the Commission, and the employer will be liable for any charge based on the Commission's estimation of the wages paid to the employee.

(9) Employers who are granted permission under subdivision (8) of this subsection to file annual reports may be given permission to file reports by telephone. Employers who report by telephone must contact either the Field Tax Auditor who is assigned to the employer's account or the Unemployment Insurance Division in Raleigh and report the required information to that Auditor or to the Division by the date the report is due under subdivision (8) of this subsection.

(10) Employers electing to do so may pay their quarterly tax contributions by electronic funds transfer. When an electronic funds transfer cannot

be completed due to insufficient funds or the nonexistence of an account of the transferor, the Commission shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). The Commission may waive this penalty for good cause shown. As used in this section, the term "electronic funds transfer" means a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(11) The Commission may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by credit card is receipt by the Commission of the full amount of taxes, penalties, and interest due. The Commission shall require an employer who pays by credit card to include an amount equal to any fee charged the Commission for the use of the card. A payment of taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes.

(b) Rate of Contributions. —

(1) **(Effective until January 1, 2002)** Beginning Rate. — The standard beginning rate of contributions for an employer is a percentage of wages paid by the employer during a calendar year for employment occurring during that year. The rate is determined in accordance with the following table:

Percentage	Date After Which Employment Occurs
2.25%	December 31, 1986
1.8	December 31, 1993
1.2	December 31, 1995
1.0	December 31, 1999

(1) **(Effective January 1, 2002)** Beginning Rate. — The standard beginning rate of contributions for an employer is a percentage of wages paid by the employer during a calendar year for employment occurring during that year. The rate is determined in accordance with the following table:

Percentage	Date After Which Employment Occurs
2.25%	December 31, 1986
1.8	December 31, 1993
1.2	December 31, 1995

(2) Experience Rating. —

a. Waiting Period for Rate Reduction. — No employer's contribution rate shall be reduced below the standard rate for any calendar year until its account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date. An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters pursuant to G.S. 96-9(a).

b. Credit Ratio. — The Commission shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.

c. Debit Ratio. — The Commission shall for each year compute a debit ratio for each employer whose account shows that the total of all its contributions paid and credited for all past periods in accordance with G.S. 96-9(c)(1) together with all other lawful credits is less than the total benefits charged to its account for all past periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.

d. Other Provisions. — No employer's contribution rate shall be reduced below the standard rate for any calendar year unless its liability extends over a period of all or part of two consecutive calendar years and, as of August 1 of the second year, its credit reserve ratio meets the requirements of that schedule used in computing rates for the following calendar year, unless the employer's liability was established under G.S. 96-8(5)b and its predecessor's account was transferred as provided by G.S. 96-9(c)(4)a.

Whenever contributions are erroneously paid into one account which should have been paid into another account or which should have been paid into a new account, that erroneous payment can be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate can be made reducing the rate below the standard rate for any period in which the account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, if an entity is determined to have met the requirements to be a covered employer, whether or not the entity has had paid on the account of its employees any sum into another account, the Commission shall collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years shall run from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith.

(3)a. through c. Repealed by Session Laws 1977, c. 727, s. 39.

d. Rate schedule A,B,C,D,E,F,G,H, or I appearing on the line opposite the fund ratio in the following Fund Ratio Schedules table shall be applicable in determining and assigning each eligible employer's contribution rate for the calendar year immediately following the computation date. The fund ratio is the total amount available for benefits in the Unemployment Insurance Fund on the computation date divided by the total amount of the taxable payroll of all subject employers for the 12-month period ending June 30 preceding the computation date.

FUND RATIO SCHEDULES

When the Fund Ratio Is: As Much As	But Less Than	Applicable Schedule
——	2.0%	A
2.0%	3.0%	B
3.0%	4.0%	C
4.0%	5.0%	D
5.0%	6.0%	E
6.0%	7.0%	F
7.0%	8.0%	G
8.0%	9.0%	H
9.0% and in excess thereof		I

d1. Repealed by Session Laws 1994, Extra Session, c. 10, s. 3.

d2. Repealed by Session Laws 1995, c. 4, s. 3, effective January 1, 1998.

d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0% & OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

d4. Expired.

d5. **(Repealed effective January 1, 2002)** The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date, and the fund ratio determined on that date is five percent (5%) or more.

§ 96-9(b)(3)d5 has a delayed repeal date. See notes.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%) A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%		0.32%						
				0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0% OVER	&	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

e. **(Effective until January 1, 2002)** Each employer whose account as of any computation date occurring after August 1, 1964, shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following Rate Schedule for Overdrawn Accounts:

RATE SCHEDULE FOR OVERDRAWN ACCOUNTS BEGINNING WITH THE CALENDAR YEAR 1978

When the Debit Ratio Is: As Much As	But Less Than	Assigned Rate
0.0%	0.3%	2.3%
0.3	0.6	2.5
0.6	0.9	2.6
0.9	1.2	2.8
1.2	1.5	3.0
1.5	1.8	3.1
1.8	2.1	3.3

§ 96-9(b)(3)e is set out twice. See notes.

When the Debit Ratio Is: As Much As	But Less Than	Assigned Rate
2.1	2.4	3.4
2.4	2.7	3.6
2.7	3.0	3.8
3.0	3.3	3.9
3.3	3.6	4.1
3.6	3.9	4.2
3.9	4.2	4.4
4.2	4.5	4.6
4.5	4.8	4.8
4.8	5.1	5.0
5.1	5.4	5.2
5.4 and over		5.4

The Rate Schedule for Overdrawn Accounts Beginning with the Calendar Year 1966 in force in any particular calendar year shall apply to all accounts for that calendar year subsequent replacement enactments notwithstanding.

e. **(Effective January 1, 2002)** Each employer whose account as of any computation date occurring after August 1, 1964, shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following Rate Schedule for Overdrawn Accounts:

RATE SCHEDULE FOR OVERDRAWN ACCOUNTS BEGINNING WITH THE CALENDAR YEAR 1978

When the Debit Ratio Is: As Much As	But Less Than	Assigned Rate
0.0%	0.3%	2.9%
0.3	0.6	3.1
0.6	0.9	3.3
0.9	1.2	3.5
1.2	1.5	3.7
1.5	1.8	3.9
1.8	2.1	4.1
2.1	2.4	4.3
2.4	2.7	4.5
2.7	3.0	4.7
3.0	3.3	4.9
3.3	3.6	5.1
3.6	3.9	5.3
3.9	4.2	5.5
4.2 and over		5.7

§ 96-9(b)(3)e is set out twice. See notes.

The Rate Schedule for Overdrawn Accounts Beginning with the Calendar Year 1966 in force in any particular calendar year shall apply to all accounts for that calendar year subsequent replacement enactments notwithstanding.

f. The computation date for all contribution rates shall be August 1 of the calendar year preceding the calendar year with respect to which such rates are effective.

g. Any employer may at any time make a voluntary contribution, additional to the contributions required under this Chapter, to the fund to be credited to its account, and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as this term is used in G.S. 96-8(8). Any voluntary contributions so made by an employer within 30 days after the date of mailing by the Commission pursuant to G.S. 96-9(c)(3) of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to its account as of the previous July 31. If, however, the voluntary contribution is made after July 31 of any year it shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G.S. 96-9(b)(3) until the following July 31. The Commission in accepting a voluntary contribution shall not be bound by any condition stipulated in or made a part of the voluntary contribution by the employer.

h. If, within the calendar month in which the computation date occurs, the Commission finds that any employing unit has failed to file any report required in connection therewith or has filed a report which the Commission finds incorrect or insufficient, the Commission shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time and shall notify the employing unit thereof by registered mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report, as the case may be, within 15 days after the mailing of such notice, the Commission shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increases but not to reduction, on the basis of subsequently ascertained information.

i. Repealed by Session Laws 1987, c. 17, s. 5.

j. A tax is imposed upon contributions at the rate of twenty percent (20%) of the amount of contributions due. The tax is due and payable at the time and in the same manner as the contributions. The tax does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the Reserve Fund equals or exceeds one hundred sixty-three million three hundred forty-nine thousand dollars ($163,349,000), which is one percent (1%) of taxable wages for calendar year 1984. The collection of this tax, the assessment of interest and penalties on unpaid taxes, the filing of judgment liens, and the enforcement of the liens for unpaid taxes is governed by the provisions of G.S. 96-10 where applicable. Taxes collected under this subpart shall be credited to the Employment Security Commission Reserve Fund, and refunds of the taxes shall be paid from the same Fund. Any interest or penalties collected on unpaid taxes shall be credited to the Special Employment Security Administration Fund, and any interest or penalties refunded on taxes imposed by this subpart shall be paid from the same Fund.

(c)(1) Except as provided in subsection (d) of this section, the Commission shall maintain a separate account for each employer and shall credit his account with all voluntary contributions made by him and all other contributions which he has paid or is paid on his behalf, provided the Commission shall credit the account of each employer in an amount equal to eighty percent (80%) of all voluntary contributions paid with respect to periods prior to January 1, 1984, and of all other contributions paid with respect to periods between July 1, 1965, and December 31, 1983. On the computation date, beginning first with August 1, 1948, the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to this State's account in the unemployment trust fund in the treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on a pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this Act shall be construed to grant any employer or individual in his service prior claims or rights to the amount paid by him into the fund either on his own behalf or on behalf of such individuals.

(2) Charging of benefit payments. —

a. Benefits paid shall be allocated to the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period, except as hereinafter provided in paragraphs b, c, and d of this subdivision, G.S. 96-9(d)(2)c, and 96-12.01G. The amount so allocated shall be multiplied by one hundred twenty percent (120%) and charged to that employer's account. Benefits paid shall be charged to employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired.

b. **(Effective until June 30, 2001)** Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely

§ 96-9(c)(2)b is set out twice. See notes.

for a bona fide inability to do the work for which he was hired but only where the claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family hardship; or (viii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Work First Program assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c).

b. **(Effective June 30, 2001)** Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but

§ 96-9(c)(2)b is set out twice. See notes.

only where the claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); or (vi) separation due to leaving for disability or health condition[; (vii) Expired]; or (viii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Work First Program assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c).

c. Any benefits paid to any claimant who is attending a vocational school or training program as provided in G.S. 96-13(a)(3) shall not be charged to the account of the base period employer(s).

d. Any benefits paid to any claimant under the following conditions shall not be charged to the account of the base period employer(s):
   1. The benefits are paid for unemployment due directly to a major natural disaster, and
   2. The President has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 USCA 4401, et seq., and
   3. The benefits are paid to claimants who would have been eligible for disaster unemployment assistance under this Act,

if they had not received unemployment insurance benefits with respect to that unemployment.

e. 1. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be charged to the experience rating account of any employer.

2. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service.

(3) As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each employer's account and shall furnish him with a statement of all charges and credits thereto. At the same time the Commission shall notify each employer of his rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination prior to May 1 following the effective date of such rates. The Commission may redetermine on its own motion within the same period of time.

(4) Transfer of account. —

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision.

On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires all of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of his rate of contributions. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the Commission of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to pay at that rate until the transferring employer qualifies for a reduction, reacquires the account transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

(5) In the event any employer subject to this Chapter ceases to be such an employer, his account shall be closed and the same shall not be used in any future computation of such employer's rate nor shall any period prior to the effective date of the termination of such employer during which benefits were chargeable be considered in the application of G.S. 96-9(b)(2) of this Chapter.

(6) If the Commission finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or of any of its allies, or of the United Nations, such employer's experience rating account shall not be terminated; and, if the business is resumed within two years after the discharge or release from active duty in the Armed Forces of such person or persons, the employer's account shall be deemed to have been chargeable with benefits throughout more than 13 consecutive calendar months ending July 31 immediately preceding the computation date. This subdivision shall apply only to employers who are liable for contributions under the experience rating system of financing unemployment benefits. This subdivision shall not be construed to apply to employers who are liable for payments in lieu of contributions or to employers using the reimbursable method of financing benefit payments.

(d) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this paragraph. For the purposes of this paragraph, a nonprofit organization is an organization (or group of organizations) described in section 501(c)(3) of the United States Internal Revenue Code of 1954 which is exempt from income tax under section 501(a) of said Code.

(1)a. Any nonprofit organization which becomes subject to this Chapter on or after January 1, 1972, shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this paragraph to pay the Commission for the Unemployment Insurance Fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin within a benefit year established during the effective period of such election.

b. Any nonprofit organization which is or becomes subject to this Chapter on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than four calendar years beginning with the date on which subjectivity begins by filing a written notice of its election with the Commission not later than 30 days immediately following the date of written notification of the determination of such subjectivity. Provided if notification is not by registered mail, the election may be made on or after January 1, 1972, within six months following the date of the written notification of the determination of such subjectivity. If such election is not made as set forth herein, no election can be made until after four calendar years have elapsed under the contributions method of payment.

c. Any nonprofit organization which makes an election in accordance with subparagraph b of this paragraph will continue after such four calendar years to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election not later than 30 days prior to the next January 1, effective on such January 1.

d. Any nonprofit organization which has been paying contributions under this Chapter for a period of at least four consecutive calendar years subsequent to January 1, 1972, may elect to change to a reimbursement basis by filing with the Commission not later than 30 days prior to the next January 1 a written notice of election to become liable for payments in lieu of contributions, effective on such January 1. Such election shall not be terminable for a period of four calendar years. In the event of such an election, the account of such employer shall be closed and shall not be used in any future computation of such employer's contribution rate in any manner whatsoever. Provided, however, any nonprofit employer formerly paying contributions who elects and qualifies to change to a reimbursement basis may be relieved of the requirement to pay one percent (1%) of taxable wages as required by G.S. 96-9(d)(2)a to the following extent and upon the following conditions:

1. Any nonprofit employer which has, for the year the election will be effective, an experience rating of 1.7 or less, will have transferred from its experience rating account an amount equal to one percent (1%) of its payroll as reported for each of the four calendar quarters which constitute the election year;
2. Any nonprofit employer which has, for the year the election will be effective, an experience rating of less than 2.7 but more than 1.7, will have transferred from its experience rating account an amount equal to one-half of one percent (.5%) of its payroll as reported for each of the four calendar quarters which constitute the election year. Such employers shall make advance payments to the Commission quarterly, computed at one-half of one percent (.5%) of the taxable wages reported as provided in G.S. 96-9(d)(2)a;
3. Any nonprofit employer which has, for the year the election will become effective, an experience rating of 2.7 or more, upon electing to change to a reimbursement basis, will meet all the requirements of G.S. 96-9(d)(2)a, including making advance payments computed at one percent (1%) of taxable wages.

e. The Commission, in accordance with such regulations as it may adopt, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this subparagraph and shall be processed as provided herein.

a. Quarterly contributions and wage reports and advance payments shall be submitted to the Commission quarterly under the same conditions and requirements of G.S. 96-9 and 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on such reports; provided that such advance payments shall become effective only with respect to the first four thousand two hundred dollars ($4,200) in wages paid in a calendar year until January 1, 1978. On and after that date advance payments shall be effective with respect to the federally required wage base provided that after December 31, 1983, the wage base shall be the same as that provided for in G.S. 96-9(a)(5). Collection of such advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

Beginning January 1, 1978, any employer making quarterly reports of employment to the Commission and if such employer is a newly electing reimbursement employer he shall pay contributions of one percent (1%) of taxable wages entered on such reports.

Any employer paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, shall continue to file quarterly reports but shall make no payments with those reports.

b. The Commission shall establish a separate account for each such employer and such account shall be credited, and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full and voluntary contributions are not applicable.

c. Benefits paid shall be allocated to the employer's account in accordance with G.S. 96-9(c)(2)a but charged to such account without the application of any multiplier, and no benefits shall be noncharged except amounts equal to fifty percent (50%) of extended benefits paid and amounts equal to one hundred percent (100%) of benefits paid through error.

d. As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each such employer's account and shall furnish him with a statement of all charges and credits thereto.

As of the second computation date (August 1) following the effective date of liability and as of each computation date thereafter, any credit balance remaining in the employer's account (after all applicable postings) in excess of whichever is the greater (a) benefits charged to such account during the 12 months ending on such computation date, or (b) one percent (1%) of taxable wages for the 12 months ending on June 30 preceding such computation date shall be refunded. Any such refund shall be made prior to February 1 following such computation date.

Should the balance in such account not equal that requiring a refund, the employer shall upon notice and demand for payment mailed to his last known address pay into his account an amount that will bring such balance to the minimum required for a refund. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment. Any such amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Upon a change in election as to the method of payment from reimbursement to contributions, or upon termination of coverage and after all applicable benefits paid based on wages paid prior to such change in election or termination of coverage have been charged, any credit balance in such account shall be refunded to the employer.

Should there be a debit balance in such account, the employer shall, upon notice and demand for payment, mailed to his last-known address, pay into his account an amount equal to such debit balance. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment.

Any such amount unpaid on the date due shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Beginning January 1, 1978, each employer paying by reimbursement shall have his account computed on computation date (August 1) and if there is a deficit shall be billed for an amount necessary to bring his account to one percent (1%) of his taxable payroll. Any amount of his account in excess of that required to equal one percent (1%) of his payroll shall be refunded. Amounts due from any employer to bring his account to a one percent (1%) balance shall be billed as soon as practical and payment will be due within 25 days from the date of mailing of the statement of amount due.

e. The Commission may make necessary rules and regulations with respect to coverage of a group of nonprofit organizations and with respect to the reimbursement of benefits payments by such group of nonprofit organizations.

(3) a. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be charged to a nonprofit organization which makes payments to the State Unemployment Insurance Fund in lieu of contributions.

b. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service.

(e) In order that the Commission shall be kept informed at all times on the circumstances and conditions of unemployment within the State and as to whether the stability of the fund is being impaired under the operation and effect of the system provided in subsection (c) of this section, the actuarial study now in progress shall be continued and such other investigations and studies of a similar nature as the Commission may deem necessary shall be made.

(f)(1) On and after January 1, 1978, all benefits charged to a State or local governmental employing unit shall be paid to the Commission within 25 days from the date a list of benefit charges is mailed to the State or local governmental employing agency and the appropriate account(s) shall be credited with such payment(s).

(2) In lieu of paying for benefits by reimbursement as provided in subdivision (1) hereof, any State or local governmental employing unit

may elect pursuant to rules and regulations established by the Commission:

a. To pay contributions on an experience rating basis as provided in G.S. 96-9(a), (b), and (c); or,

b. To pay to the Commission, within 25 days from the date a list of benefit charges is mailed to such employing unit, a sum equal to the amount which its account would be charged if it were a tax paying employer under G.S. 96-9(c)(2).

(3) State or local governmental employing units paying for benefits as provided in subdivision (1) herein may establish pool accounts; provided, that such pool accounts are established and maintained according to the rules and regulations of the Commission.

(4) Any governmental entity paying by reimbursement as provided in subdivision (1) hereof shall not have any benefits paid against its account noncharged or forgiven except as provided in G.S. 96-9(d)(2)c.

(g) Nothing contained in subsections (d) and (f) of this section shall be construed to prevent the Commission from providing any reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly, if in its sole discretion, the Commission deems such action to be in the best interest of the Commission and the affected employer(s).

(h)(1) Any nonprofit organization which has been paying contributions on a reimbursement basis for at least three consecutive calendar years during none of which years the benefit charges exceeded four tenths of one percent (.4%) of its taxable payroll may, before November 1 of the fourth or subsequent calendar year, elect to pay contributions by special reimbursement on the basis provided for in subdivision (2) below but only upon the following conditions:

a. Benefit charges in the year of election are less than four tenths of one percent (.4%) of taxable payroll.

b. The election shall apply to no less than the four calendar years following the year of election unless terminated by the Commission under subdivision (3) below.

c. All reimbursements during the year of election and the three preceding years were paid when due.

d. The election of special reimbursement shall not entitle the electing nonprofit organization to any refund of any portion of its account balance.

e. No later than January 1 of the first year to which its election applies, the electing nonprofit organization shall furnish the Commission a letter of credit in an amount equal to one hundred fifty percent (150%) of the account balance required under subdivision (2) below.

f. The Commission shall by regulation prescribe the form of the letter of credit and the criteria for the financial institution issuing such letter of credit along with the form of election under this section.

(2) Any qualified nonprofit organization that meets the conditions of subdivision (1) above shall, upon the approval of its election by the Commission, pay contributions by special reimbursement as follows:

a. The organization's account shall have a required minimum balance that shall be computed on August 1 of each calendar year for the following calendar year and shall be equal to the greater of:

1. One-half the largest amount of claims charged to it during any of the three calendar years preceding the computation date; or,

2. One-tenth of one percent (0.1%) of the highest total taxable payroll during any of the three calendar years preceding the computation date.

b. On the first day of each quarter of any calendar year, the Commission shall bill the employer for an amount necessary to bring its account to the required minimum balance, and the amount so billed is due no later than 25 days after the bill is mailed.

(3) If any electing organization shall fail to make any quarterly payment when due:

a. The Commission may draw the full amount of the letter of credit for application to the employer's account;

b. The organization's required minimum balance shall immediately and without notice become the greater of:

1. A sum equal to its current minimum balance plus the full amount of the current letter of credit; or

2. A sum equal to five tenths of one percent (.5%) of its total taxable payroll. Any amount necessary, after the application of any funds drawn from the letter of credit, to bring the employer's account to such balance shall be payable upon demand.

c. If, after demand, the organization shall fail to pay any sums required under paragraph b. above, the Commission may revoke the organization's election for special reimbursement and any difference between the employer's account balance and one percent (1%) of its total taxable payroll shall become immediately due and payable.

d. The Commission may, in addition, exercise any of the powers granted to it in G.S. 96-10 to collect any amount due.

e. Pursuant to such regulations as the Commission may adopt, the Commission shall afford any organization affected by this paragraph a hearing to determine if any increase in the organization's minimum required balance should be reduced, in whole or in part, or if any revocation of a special reimbursement election should be rescinded. If the Commission, in its sole discretion, is satisfied that the conditions giving rise to the increase or revocation have been corrected, it may reduce such increase or rescind such revocation provided that it may require as a condition of such reduction or recision a new letter of credit up to three times the amount normally required.

f. When used in the subsection, "total taxable payroll" means the highest total taxable payroll during the three most recent, completed calendar years. (Sess. 1936, c. 1, s. 7; 1939, c. 27, s. 6; 1941, c. 108, ss. 6, 8; c. 320; 1943, c. 377, ss. 11-14; 1945, c. 522, ss. 11-16; 1947, c. 326, ss. 13-15, 17; c. 881, s. 3; 1949, c. 424, ss. 9-13; c. 969; 1951, c. 322, s. 2; c. 332, ss. 4-7; 1953, c. 401, ss. 12-14; 1955, c. 385, ss. 5, 6; 1957, c. 1059, ss. 5-11; 1959, c. 362, ss. 7, 8; 1965, c. 795, ss. 6-10; 1969, c. 575, ss. 7, 8; 1971, c. 673, ss. 14-20; 1973, c. 172, ss. 2, 3; c. 740, s. 1; 1977, c. 727, ss. 37-49; 1979, c. 660, ss. 13-15; 1981, c. 160, ss. 13-15; c. 534; 1983, c. 585, ss. 1-11; 1985, c. 552, ss. 5-7, 13; 1987, c. 17, ss. 3-7; c. 197; 1987 (Reg. Sess., 1988), c. 999, ss. 2, 3; 1989, c. 583, ss. 4, 6; c. 770, s. 20; 1991, c. 276, s. 1; c. 421, s. 1; c. 458, ss. 2, 3; 1991, Ex. Sess., c. 6, s. 2; 1993, c. 85, s. 1; c. 424, s. 1; 1994, Ex. Sess., c. 10, ss. 1-3; 1995, c. 4, ss. 1-3; c. 463, ss. 1-3; 1996, 1st Ex. Sess., c. 1; 1997-398, s. 4; 1999-196, s. 3; 1999-321, ss. 1, 3-6; 1999-340, ss. 1-3; 1999-421, s. 1; 2000-140, s. 87.)

Editor's Note. —

Session Laws 1999-321, s. 3 and Session Laws 1999-340, s. 3 both amended subdivision (c)(4)b of this section. Some of the changes made by the two acts were conflicting. Subsequently, Session Laws 2000-140, s. 87, effective July 21, 2000, repealed the amendment by Session Laws 1999-321, s. 3.

Session Laws 1999-321, s. 8, provided that amendments to this section by ss. 3 to 6 would be effective with respect to calendar quarters beginning on or after January 1, 2000, and would be repealed effective with respect to calendar quarters beginning on or after January 1, 2002. The amendment by Session Laws 1999-321, s. 3 was repealed by Session Laws 2000-140, s. 87, effective July 21, 2000.

Effect of Amendments. —

Session Laws 1999-321, s. 3, effective with respect to calendar quarters beginning on or after January 1, 2000, in subdivision (c)(4)b, rewrote the second paragraph and made gender-neutral changes throughout. This amendment was subsequently repealed by Session Laws 2000-140, s. 87, effective July 21, 2000.

Session Laws 1999-321, ss. 4 through 6, effective with respect to calendar quarters beginning on or after January 1, 2000, added the last entry to the table in subdivision (b)(1); added subdivision (b)(3)d5; and rewrote the table in subdivision (b)(3)e. See editor's note for repeal of these amendments.

Session Laws 2000-140, s. 87, effective July 21, 2000, repealed Session Laws 1999-321, s. 3, which had amended subdivision (c)(4)b. See editor's notes.

§ 96-13. Benefit eligibility conditions.

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that —

(1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the Commission at regular intervals of not less than three weeks and not more than six weeks apart and in accordance with such regulations as the Commission may prescribe;

(2) He has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);

(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would

be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:

a. 1. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;

2. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and

3. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,

b. Such approval is required for the Commission to receive the benefits of federal law.

(4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.

(5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services.

(b)(1) The payment of benefits to any individual based on services for nonprofit organizations, hospitals, or State hospitals and State institutions of higher education, other institutions of higher education, or secondary schools and subdivisions of secondary schools subject to this Chapter shall be in the same manner and under the same conditions of the laws of this Chapter as applied to individuals whose benefit rights are based on other services subject to this Chapter.

Except that with respect to services in the educational institutions listed above:

a. In an instructional, research, or principal administrative capacity, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms, or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, to any individual if he performs such services in the first of the academic years or terms and if there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of the academic years or terms; and,

b. In any other capacity for an educational institution:

1. Compensation shall be denied on the basis of such services for any week which commences during a period between two successive academic years or terms if the individual performs such services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of the academic years or terms, except that

2. If compensation is denied to any individual for any week under subclause 1 and the individual was not offered an opportunity to perform such services for the educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause 1; and,

c. With respect to any services described in clause a or b, compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following the vacation period or holiday recess; and,

d. With respect to any services described in clause a or b, compensation on the basis of services in any such capacity shall be denied as specified in clauses a, b, and c. to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions; and,

e. With respect to any services to which G.S. 96-13(b)(1) applies, if such services are provided to or on behalf of an educational institution, compensation shall be denied under the same circumstances as described in clauses a through d.

(2) Repealed by Session Laws 1983, c. 625, s. 5.

(c) Beginning February 16, 1977, an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he has been totally, partially, or part-totally unemployed for a waiting period of one week with respect to each benefit year. No week shall be counted as a week of unemployment for waiting-period credit under this provision unless the claimant except for the provisions of this subdivision was otherwise eligible for benefits. As to claims filed on or after September 5, 1999, the waiting period for a benefit year shall not be required of any claimant if all of the following conditions are met:

(1) The benefits are to be paid for unemployment due directly to a major natural disaster.

(2) The President of the United States has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 U.S.C.A. 4401, et seq.

(3) The benefits are to be paid to claimants who would have been eligible for disaster unemployment assistance if they had not been eligible to receive unemployment insurance benefits with respect to that unemployment.

(4) The claimant files for a waiver of the waiting period week within 30 days after the date of notification or mailing of the notice of the right to have the waiting period week waived. The Employment Security Commission, for good cause shown, may at any time in its discretion, with or without motion or notice, order the period enlarged if the request for an enlargement of time is made before the expiration of the period originally prescribed or as extended by a previous order. After expiration of the specified period, the Employment Security Commission may permit the act to be done where the failure to act was a result of excusable neglect.

The benefits paid as a result of the waiver of the waiting period week shall not be charged to the account or accounts of the base period employer or employers in accordance with G.S. 96-9(c)(2)d. The Employment Security Commission shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b).

(d) Benefit entitlement based on services for governmental entities that become subject to Employment Security Commission law effective January 1, 1978, will be administered in the same manner and under the same conditions of the laws of this Chapter as are applicable to individuals whose benefit rights are based on other service subject to this Chapter.

(e) Benefits shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the latter of such seasons (or similar periods).

(f)(1) Benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, or otherwise was permanently residing in the United States under color of law at the time such services were performed, or was lawfully present for purposes of performing such services (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203 (a)(7) or section 212 (d)(5) of the Immigration and Nationality Act). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence.

(2) An individual who is not a citizen or national of the United States shall not be deemed available for work under subsection (a)(3) of this section unless the individual is in satisfactory immigration status

under the laws administered by the United States Department of Justice, Immigration and Naturalization Service.

(g)(1) Except as herein provided, no individual shall be eligible for benefits for any week during any part of which the Commission finds that work was not available to the individual because he had been placed on a bona fide disciplinary suspension by his employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which constitute fault on the part of the employee and are connected with the work but such acts or omissions need not alone be disqualifying under G.S. 96-14.

(2) Ineligibility pursuant to the preceding paragraph based on a single disciplinary suspension shall not be imposed for any claims week beginning after the tenth consecutive calendar day of the suspension. If at the time a claim is filed for such a week the individual is still so suspended, the individual shall be deemed to have been discharged from his work because of all the acts or omissions that caused his suspension and the issue of whether that discharge was for disqualifying reasons under G.S. 96-14 shall then be adjudicated pursuant to G.S. 96-15.

(3) Any individual who files a claim for benefits for a week with respect to which he is ineligible under this subsection is deemed to be attached to his employer's payroll and any issue concerning separation from work that may be present under G.S. 96-14 shall be held in abeyance until such time as a claim is filed for a week to which this subsection does not apply. (Ex. Sess. 1936, c. 1, s. 4; 1939, c. 27, ss. 4, 5; c. 141; 1941, c. 108, s. 2; 1943, c. 377, s. 5; 1945, c. 522, ss. 27-28; 1947, c. 326, s. 22; 1949, c. 424, s. 22; 1951, c. 332, s. 13; 1961, c. 454, s. 19; 1965, c. 795, ss. 17, 18; 1969, c. 575, ss. 10, 11; 1971, c. 673, ss. 27, 28; 1973, c. 172, s. 6; 1975, c. 2, s. 6; c. 8, ss. 1, 2; c. 226, ss. 1, 2; 1977, c. 727, s. 53; 1979, c. 660, ss. 20, 21, 29-31; 1981, c. 160, ss. 24, 25; c. 883; 1983, c. 585, s. 17; c. 625, ss. 2-5; 1985, c. 53; c. 197, ss. 4, 5; c. 552, ss. 10, 11; c. 616, s. 2; 1989, c. 707, s. 3; c. 770, s. 22; 1991, c. 423, s. 1; 1993 (Reg. Sess., 1994), c. 680, s. 5; 1995, c. 270, s. 1; c. 284, s. 1; 1997-398, s. 5; 1997-456, s.27; 1999-463, Ex. Sess., s. 7;)

Editor's Note. —
Session Laws 1999-463, enacted at the 1999 Extra Session held on December 15 and 16, 1999, provides in s. 1 that the act shall be known as the Hurricane Floyd Recovery Act of 1999.

For counties declared a major disaster area as a result of Hurricane Floyd, see the preface to the 2000 Special Supplement or the note under § 115C-84.2.

Effect of Amendments. — The 1999 Extra Session amendment, by Session Laws 1999-463, s. 7, effective September 1, 1999, rewrote subsection (c), deleting the former first sentence, relating to the time period from January 29, 1975, through February 15, 1977, and adding the provisions relating to claims filed on or after September 5, 1999, as well as the final two sentences of subsection (c).

Article 4.

Job Training, Education, and Placement Information Management.

§ 96-31. Definitions.

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "CFS" means the common follow-up information management system developed by the Employment Security Commission of North Carolina as authorized under this Article.
(2) "ESC" means the Employment Security Commission of North Carolina.
(3) Repealed by Session Laws 2000, c. 140, s. 93.1(d), effective July 21, 2000.
(4) "State job training, education, and placement program" or "State-funded program" means a program operated by a State or local government agency or entity and supported in whole or in part by State or federal funds, that provides job training and education or job placement services to program participants. The term does not include on-the-job training provided to current employees of the agency or entity for the purposes of professional development. (1995, c. 507, s. 25.6(a); 2000-140, s. 93.1(d).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(d), effective July 1, 2000, repealed subdivision (3), stating "'OSBM' means the Office of State Budget and Management."

§ 96-32. Common follow-up information management system created.

(a) The Employment Security Commission of North Carolina shall develop, implement, and maintain a common follow-up information management system for tracking the employment status of current and former participants in State job training, education, and placement programs. The system shall provide for the automated collection, organization, dissemination, and analysis of data obtained from State-funded programs that provide job training and education and job placement services to program participants. In developing the system, the ESC shall ensure that data and information collected from State agencies is confidential, not open for general public inspection, and maintained and disseminated in a manner that protects the identity of individual persons from general public disclosure.

(b) The ESC in consultation with the Office of State Budget, Planning, and Management shall adopt procedures and guidelines for the development and implementation of the CFS authorized under this section.

(c) Based on data collected under the CFS, the Office of State Budget, Planning, and Management shall evaluate the effectiveness of job training, education, and placement programs to determine if specific program goals and objectives are attained, to determine placement and completion rates for each program, and to make recommendations regarding the continuation of State funding for programs evaluated. The ESC shall provide to the Office of State Budget, Planning, and Management data collected under the CFS in a manner and with the frequency necessary for the Office of State Budget, Planning, and Management to conduct the evaluation required under this subsection. The ESC shall consult with the Office of State Budget, Planning, and Management to determine the most efficient and effective method for providing to the Office of State Budget, Planning, and Management data collected under the CFS. The Office of State Budget, Planning, and Management shall maintain the same levels of confidentiality with respect to CFS data received from the ESC as is required of the ESC under this Article. (1995, c. 507, s. 25.6(a); 2000-140, s. 93.1(e).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(e), effective July 1, 2000, deleted the last sentence in subsection (c) and substituted "Office of State Budget, Planning, and Management" for "OSBM" and "Office of State Budget and Management" throughout the section.

§ 96-35. Reports on common follow-up system activities.

(a) The Employment Security Commission of North Carolina shall present annually by May 1 to the General Assembly and to the Governor a report of CFS activities for the preceding calendar year. The report shall include information on and evaluation of job training, education, and placement programs for which data was reported by State and local agencies subject to this Article. Evaluation of the programs shall be on the basis of fiscal year data.

(b) The Office of State Budget, Planning and Management shall report to to the Governor and to the General Assembly upon the convening of each biennial session, its evaluation of and recommendations regarding job training, education, and placement programs for which data was provided to the CFS. (1995, c. 507, s. 25.6(a); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (b).

Chapter 97.

Workers' Compensation Act.

Article 1.

Workers' Compensation Act.

Article 1.

Workers' Compensation Act.

§ 97-1. Short title.

CASE NOTES

This section did not bar plaintiff's claims for intentional and negligent infliction of emotional distress because they neither resulted from a risk to which she was exposed because of the nature of her employment nor occurred in the course of her employment. Buser v. Southern Food Serv., 73 F. Supp. 2d 556 (M.D.N.C. 1999).

Cited in Barber v. Going West Transp., Inc., 134 N.C. App. 428, 517 S.E.2d 914 (1999).

§ 97-2. Definitions.

CASE NOTES

I. IN GENERAL.

Quoted in Flores v. Stacy Penny Masonry Co., 134 N.C. App. 452, 518 S.E.2d 200 (1999); Buser v. Southern Food Serv., 73 F. Supp. 2d 556 (M.D.N.C. 1999); Lanning v. Fieldcrest-Cannon, Inc., — N.C. —, 530 S.E.2d 54, 2000 N.C. LEXIS 434 (2000).

Cited in Reece v. Forga, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 790 (July 5, 2000).

II. EMPLOYMENT, EMPLOYEES, AND EMPLOYERS.

A. In General.

Aliens. — This section makes clear that the General Assembly sought to include individuals like the plaintiff, who worked without the right of citizenship or a green card, under the protections of the Workers' Compensation Act. Rivera v. Trapp, 135 N.C. App. 296, 519 S.E.2d 777 (1999).

C. Regular Employment of Four (Now Three) or More.

Evidence Insufficient. — Where the record contained no evidence that defendant/"carrier" regularly employed three or more employees, no employer-employee relationship existed within the meaning of the Workers' Compensation Act. Williams v. ARL, Inc., 133 N.C. App. 625, 516 S.E.2d 187 (1999).

E. Independent Contractors.

3. Individuals Held Not to Be Independent Contractors.

Tractor Trailer Driver. — An employment relationship existed between plaintiff/driver and defendant/truck company where defendant deducted taxes, health insurance and social security costs from driver's checks, where "Contract Driver Handbook" set out provisions exercising control of plaintiff's time and manner of performance, and where trucks were owned, insured and maintained by defendant. Barber v. Going West Transp., Inc., 134 N.C. App. 428, 517 S.E.2d 914 (1999).

G. Employees Lent by Employer.

Test of Employment. —
The three-prong "special employer" test as set out in Collins v. Edwards, 21 N.C. App. 455, 204 S.E.2d 873 (1974), is used to determine whether an employee may be deemed to have joint employers for purposes of the Worker's Compensation Act. Anderson v. Demolition Dynamics, Inc., — N.C. App. —, 525 S.E.2d 471, 2000 N.C. App. LEXIS 105 (2000).

"Contract for Employment" Prong of the Special Employer Test. — Although decedent, after being contacted by the second company, sought permission from the owner of the first company to work at the site of the second company and allegedly "accepted that assignment" by coming to the site, these actions standing alone did not conclusively satisfy the "contract for employment" prong of the special employer test necessary for proving an employer-employee relationship. Anderson v. Demolition Dynamics, Inc., — N.C. App. —, 525 S.E.2d 471, 2000 N.C. App. LEXIS 105 (2000).

III. AVERAGE WEEKLY WAGES.

B. Illustrative Cases.

Trailer Truck Driver. — Where trailer truck driver's job was properly classified as "seasonal," the Industrial Commission's determination of plaintiff's average weekly wage was not supported by the evidence and the matter, would be remanded for recalculation and entry of related findings. Barber v. Going West Transp., Inc., 134 N.C. App. 428, 517 S.E.2d 914 (1999).

V. ACCIDENT.

Death by Gunshot. — Industrial Commission did not err in concluding that plaintiffs were entitled to a presumption of compensability, where defendants failed to rebut the presumption that the death of an employee who died from a gunshot wound was accidental and arose out of his employment. Horton v. Powell Plumbing & Heating of N.C., Inc., 135 N.C. App. 211, 519 S.E.2d 550 (1999).

Injury to Nurse Lifting Patient. — Where labor and delivery nurse injured herself while lifting the legs of a 263 pound woman in order to facilitate delivery, the evidence did not support the Industrial Commission's denial of compensation based on the finding that plaintiff's injuries "occurred while performing her usual employment duties in the usual way." Calderwood v. Charlotte-Mecklenburg Hosp. Auth., 135 N.C. App. 112, 519 S.E.2d 61 (1999).

VII. INJURIES WHILE ACTING FOR BENEFIT OF SELF OR THIRD PERSON.

Truck driver shot by security guards while trying to stop robber did not suffer injuries arising out of and in the course of his employment. Roman v. Southland Transp. Co., 350 N.C. 549, 515 S.E.2d 214 (1999).

XVII. DISABILITY.

Evidence that plaintiff held "temporary" jobs was not sufficient to rebut the presumption of disability created by the Industrial Commission-approved Form 21 agreement. Davis v. Embree-Reed, Inc., 135 N.C. App. 80, 519 S.E.2d 763 (1999), cert. denied, 351 N.C. 102, — S.E.2d — (1999).

Claimant Must Show Disability Work-Related. —
Plaintiff did not meet her burden of showing she sustained a disability as a consequence of her injury where there was competent evidence in the record to show that plaintiff was released to return to work without restrictions four days after her injury , and that she was capable of earning her regular wages and performing her regular duties. Fuller v. Motel 6, — N.C. App. —, 526 S.E.2d 480, 2000 N.C. App. LEXIS 150 (2000).

Evidence of Incapacity to Earn Wages Held Sufficient. — Where defendant failed to come forward with rebuttal evidence, the Industrial Commission did not err in finding that the medical evidence, plaintiff's complaints of chronic leg and back pain related during each visit to her physicians, and plaintiff's continuing pain treatment and doctor visits as of the hearing date provided competent evidence supporting a determination that plaintiff was incapable of earning the same wages from defendant or another employer as a result of lumbosacral strain. Barber v. Going West Transp., Inc., 134 N.C. App. 428, 517 S.E.2d 914 (1999).

XVIII. BURDEN OF PROOF AND EVIDENCE.

Employee to Establish Disability Before Employer Can Be Required to Prove the Availability of Suitable Employment. — The Industrial Commission erred in placing the initial burden on the defendants/employers to prove the availability of suitable employment at pre-injury wages without first requiring plaintiff/injured illegal alien employee to establish the existence and extent of his disability. Before defendants could be required to prove the availability of suitable employment, plaintiff had to first come forward with evidence to show that his earning capacity was diminished as a result of his on-the-job injury. Olivares-Juarez v. Showell Farms, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 785 (July 5, 2000).

Including Inability to Earn Pre-Injury Wages. — Industrial Commission misapplied the law by erroneously placing the initial burden on defendant to prove plaintiff's capacity to earn pre-injury wages in other employment before plaintiff had met her burden of proof regarding pre-injury wages, in support of a showing of "disability" under this section, as laid out in Hilliard v. Apex Cabinet Co., 305 N.C. 593, 595, 290 S.E.2d 682, 683 (1982). Coppley v. PPG Indus., Inc., 133 N.C. App. 631, 516 S.E.2d 184 (1999).

Remand to Show Continued Disability. — Where Commission's determination that defendant who suffered back injury was credible was not supported by sufficient evidence, and there was competent evidence regarding business ownership and management by defendant, case would be remanded for plaintiff to show that he continued to be disabled. Deese v. Champion Int'l Corp, 133 N.C. App. 278, 515 S.E.2d 239 (1999), cet. granted, 350 N.C. 828 (1999).

§ 97-3. Presumption that all employers and employees have come under provisions of Article.

CASE NOTES

Presumption Prevents Court from Exercising Jurisdiction. — A claim in which the plaintiff/employee alleges only that he sustained injuries due to defendant/employer's negligence while he was performing duties within the course and scope of his employment is within the exclusive jurisdiction of the Industrial Commission and cannot be heard by the court without further evidence that the employer refuses to accept the provisions of this Act. Reece v. Forga, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 790 (July 5, 2000).

Quoted in Buser v. Southern Food Serv., 73 F. Supp. 2d 556 (M.D.N.C. 1999).

§ 97-6. No special contract can relieve an employer of obligations.

CASE NOTES

An employer is not permitted to escape his liability or obligations under this Article, etc.

This section invalidated attempt by an Arkansas trucking company/employer to relieve itself of responsibility under the North Carolina Workers' Compensation Act and to limit employee's right to compensation in any state other than Arkansas. Perkins v. Arkansas Trucking Servs., Inc., 134 N.C. App. 490, 518 S.E.2d 36 (1999). But see Perkins v. Arkansas Trucking Servs., 351 N.C. 634, 528 S.E.2d 902 (2000).

Employer May Not Skirt Jurisdiction. — Plaintiff's principal place of employment was within North Carolina. Plaintiff was assigned to operate a tractor-trailer in an area consisting of twelve to thirteen southern states but no state, standing alone, had the same degree of significant contacts to plaintiff's employment as North Carolina. Furthermore, the "Policies, Procedures and Agreement" form signed by plaintiff upon being hired was an invalid attempt to limit plaintiff's rights to those enumerated under Arkansas workers' compensation law as well as a violation of this section. Perkins v. Arkansas Trucking Servs., 351 N.C. 634, 528 S.E.2d 902 (2000).

§ 97-10.1. Other rights and remedies against employer excluded.

CASE NOTES

Employee's Rights and Remedies Hereunder Are Exclusive. —
Where defendant failed to meet its summary judgment burden of showing that decedent was a joint employee of both defendant and the wrecking company, defendant failed to establish that plaintiff's claim was barred by the affirmative defense of the exclusivity provisions of the Act. Anderson v. Demolition Dynamics, Inc., — N.C. App. —, 525 S.E.2d 471, 2000 N.C. App. LEXIS 105 (2000).

Quoted in Buser v. Southern Food Serv., 73 F. Supp. 2d 556 (M.D.N.C. 1999).

Cited in Reece v. Forga, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 790 (July 5, 2000).

§ 97-10.2. Rights under Article not affected by liability of third party; rights and remedies against third parties.

CASE NOTES

I. In General.
IV. Disbursement of Proceeds.

I. IN GENERAL.

Subsection (j) Held Constitutional. —
This section is not unconstitutionally vague or violative of due process. In re Biddix, — N.C. App. —, 530 S.E.2d 70, 2000 N.C. App. LEXIS 639 (2000).

Employers May Not Recover Benefits Paid. — The employer was not entitled to a lien on the settlement proceeds in order to recoup the payments which it made to the employee although it was free from culpability with respect to the accident in which employee was injured. In re Biddix, — N.C. App. —, 530 S.E.2d 70, 2000 N.C. App. LEXIS 639 (2000).

The superior court's determination that the lien be reduced in its entirety was factually supported and a proper, constitutional exercise of its discretion. The court made findings with respect to the extent of the employee's injuries—her ongoing pain and suffering, her medical expenses as paid by the employer, her compensation for temporary disability, as well as the amount of the settlement and the fact that the third party tortfeasor had no additional assets from which she could recover—and concluded that the amount of the settlement inadequately compensated plaintiff for her injuries. In re Biddix, — N.C. App. —, 530 S.E.2d 70, 2000 N.C. App. LEXIS 639 (2000).

Applied in Horton v. Powell Plumbing & Heating of N.C., Inc., 135 N.C. App. 211, 519 S.E.2d 550 (1999).

IV. DISBURSEMENT OF PROCEEDS.

The Industrial Commission, not the superior court, had exclusive jurisdiction, etc.
Where there had been no settlement, nor had a judgment been obtained, which was insufficient to compensate the subrogation claim of workers' compensation insurance carrier, the trial court lacked authority to direct disbursement of judgment proceeds under this section and the case would be remanded to the Industrial Commission. Hieb v. Lowery, 134 N.C. App. 1, 516 S.E.2d 621 (1999).

Attorney's Fees Improperly Disbursed. — Trial court properly ruled that any determination with respect to the payment of counsel fees in a workers' compensation lien case must be made by the Industrial Commission and that court's disbursement of attorney's fees had therefore not been proper. Hieb v. Lowery, 134 N.C. App. 1, 516 S.E.2d 621 (1999).

§ 97-13. Exceptions from provisions of Article.

(a) Employees of Certain Railroads. — This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended.

(b) Casual Employment, Domestic Servants, Farm Laborers, Federal Government, Employer of Less than Three Employees. — This Article shall not apply to casual employees, farm laborers when fewer than 10 full-time nonseasonal farm laborers are regularly employed by the same employer, federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than three employees in the same business within this State, except that any employer without regard to number of employees, including an employer of domestic servants, farm laborers, or one who previously had exempted himself, who has purchased workers' compensation insurance to cover his compensation liability shall be conclusively presumed during life of the policy to have accepted the provisions of this Article from the effective date of said policy and his employees shall be so bound unless waived as provided in this Article; provided however, that this Article shall apply to all employers of one or more employees who are employed in activities which involve the use or presence of radiation.

(c) Prisoners. — This Article shall not apply to prisoners being worked by the State or any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the State Department of Correction shall suffer accidental injury or accidental death arising out of and in the course of the employment to which he had been assigned, if there be death or if the results of such injury continue until after the date of the lawful discharge of such prisoner to such an extent as to amount to a disability as defined in this Article, then such discharged prisoner or the dependents or next of kin of such discharged prisoner may have the benefit of this Article by applying to the Industrial Commission as any other employee; provided, such application is made within 12 months from the date of the discharge; and provided further that the maximum compensation to any prisoner or to the dependents or next of kin of any deceased prisoner shall not exceed thirty dollars ($30.00) per week and the period of compensation shall relate to the date of his discharge rather than the date of the accident. If any person who has been awarded compensation under the provisions of this subsection shall be recommitted to prison upon conviction of an offense committed subsequent to the award, such compensation shall immediately cease. Any awards made under the terms of this subsection shall be paid by the State Department of Correction from the funds available for the operation of the Department of Corrections. The provisions of G.S. 97-10.1 and 97-10.2 shall apply to prisoners and discharged prisoners entitled to compensation under this subsection and to the State in the same manner as said section applies to employees and employers.

(d) Sellers of Agricultural Products. — This Article shall not apply to persons, firms or corporations engaged in selling agricultural products for the producers thereof on commission or for other compensation, paid by the producers, provided the product is prepared for sale by the producer. (1929, c. 120, s. 14; 1933, c. 401; 1935, c. 150; 1941, c. 295; 1943, c. 543; 1945, c. 766; 1957, c. 349, s. 10; c. 809; 1967, c. 996, s. 13; 1971, c. 284, s. 2; c. 1176; 1975, c. 718, s. 3; 1979, c. 247, s. 1; c. 714, s. 2; 1981, c. 378, s. 1; 1983 (Reg. Sess., 1984), c. 1042, s. 2; 1987, c. 729, s. 3; 2000-146, s. 11.)

Effect of Amendments. — Session Laws 2000-146, s. 11, effective December 1, 2000, inserted "to employees of a State-owned railroad company, as defined in G.S. 124-11, or" in subsection (a).

§ 97-17. Settlements allowed in accordance with Article.

CASE NOTES

A compromise settlement agreement was void where the plaintiff's insurer, a real party in interest, did not consent and the Industrial Commission had subject matter jurisdiction over its claim. Hansen v. Crystal Ford-Mercury, Inc., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 628 (June 20, 2000).

Applied in Saunders v. Edenton Ob/Gyn Ctr., — N.C. —, 530 S.E.2d 62, 2000 N.C. LEXIS 439 (2000).

§ 97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.

CASE NOTES

Sanctions were not proper where nonpayment was excused because defendant could not comply with the Industrial Commission's order that payments be made only to a general guardian. Valles de Portillo v. D.H. Griffin Wrecking Co., 134 N.C. App. 714, 518 S.E.2d 555 (1999), cert. denied, 351 N.C. 188, — S.E.2d — (1999).

Cited in Olivares-Juarez v. Showell Farms, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 785 (July 5, 2000).

§ 97-18.1. Termination or suspension of compensation benefits.

CASE NOTES

The employer should file a Form 24 when the employer is uncertain whether the employee has returned to work; a Form 28T is to be used by the employer only when such employer is certain that the employee has returned to work and has conclusive evidence to establish the employment. Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

Return to Work Assertion Does Not Necessarily Raise Wage Earning Capacity Issue. — Where defendants did not assert any other reason for termination of plaintiff's benefits besides "return to work" on the Form 28T, the record revealed that the plaintiff denied that she ever attempted a "trial return to work" and that she, therefore, was not required to file a Form 28U, and it was undisputed that defendants did not file a Form 24 seeking to terminate plaintiff's compensation on grounds other than plaintiff's "return to work", the only issue before the Full Commission was whether or not plaintiff had returned to work, warranting termination of benefits pursuant to this section; thus it did not consider the issue of whether or not plaintiff had wage earning capacity and neither would the Court of Appeals. Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

Plaintiff employee's benefits should not have been terminated under this section, pursuant to defendants' Form 28T request, where competent evidence supported the finding that while plaintiff engaged in intermittent mowing activities and appeared once before a Board of Adjustment on behalf of her mother, she had not returned to either full or part-time employment. Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.

CASE NOTES

Employee Not Covered Where General Contractor Was Also Owner. — The Industrial Commission erred when it found that the injured employee was covered under this section where his employer was not a subcontractor, but an independent contractor because the general contractor was also the owner of the property. Purser v. Heatherlin Properties, — N.C. App. —, 527 S.E.2d 689, 2000 N.C. App. LEXIS 319 (2000).

Failure to Consider Doctrine of Estoppel. — The Industrial Commission erred in failing to consider whether defendants, employer and insurance carrier, were estopped from denying insurance liability for the injured employee, who was not eligible under this section because his employer was not a subcontractor, where the plaintiff did not have his own insurance coverage and relied on his employer's promise of insurance before beginning work and where the insurance company did not expressly provide coverage to the plaintiff because it did not know about the plaintiff until after he was injured, and it never actually received the withheld premiums from the general contractor. Purser v. Heatherlin Properties, — N.C. App. —, 527 S.E.2d 689, 2000 N.C. App. LEXIS 319 (2000).

Carrier Not Liable for Injuries of Independent Contractor's Employee. — Where freight hauling company retained the right of control over the hiring, training and compensation of its employees, and a contract expressly defined it as an independent contractor, the Industrial Commission incorrectly exercised jurisdiction under this section to enter an award against the defendant/carrier that leased the company's trucks. Williams v. ARL, Inc., 133 N.C. App. 625, 516 S.E.2d 187 (1999).

§ 97-21. Claims unassignable and exempt from taxes and debts; agreement of employee to contribute to premium or waive right to compensation void; unlawful deduction by employer.

CASE NOTES

Imposition of Constructive Trust in Fraud Case Upheld. — The language of this section declaring that workers' compensation benefits are "exempt from all claims of creditors" did not preclude the trial court from imposing the equitable remedy of a constructive trust in favor of an employer who had been defrauded by employee's unfair and deceptive acts. Sara Lee Corp. v. Carter, 351 N.C. 27, 519 S.E.2d 308 (1999).

§ 97-22. Notice of accident to employer.

CASE NOTES

The plaintiff was reasonably excused from not giving written notice due to his limited education, confusion resulting from the initial hospitalization for a possible heart attack, his lack of understanding of the causal relationship between the incident of hitting the truck door latch and the resulting injuries, and his reliance on his wife and his doctor to notify defendant of the work-related injury; additionally, the defendant/employer presented no evidence that it was prejudiced in any way by the plaintiff waiting to file his workers' compensation claim. Peagler v. Tyson Foods, Inc., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 786 (July 5, 2000).

§ 97-25. Medical treatment and supplies.

CASE NOTES

I. IN GENERAL.

Construction with § 97-47. —
Where employee's refusal to cooperate with employer's physician resulted in litigation, the plaintiff's claim for further compensation, filed 2 years after her last compensation check, was not time-barred because her claim was not a change-of-condition case under § 97-47, but a case still pending under this section, and defendants' filing of a Form 28B had no effect on employee's right to further compensation. Scurlock v. Durham County Gen. Hosp., 136 N.C. App. 144, 523 S.E.2d 439 (1999).

Burden of Proof. —
The Commission erroneously placed on the plaintiff the burden of proving the medical treatment he sought was causally related to a past compensable injury, and the case was remanded for a new determination of causation. Reinninger v. Prestige Fabricators, Inc., — N.C. App. —, 523 S.E.2d 720, 1999 N.C. App. LEXIS 1374 (1999).

Applied in Ruggery v. North Carolina Dep't of Cors., 135 N.C. App. 270, 520 S.E.2d 77 (1999).

II. WHAT TREATMENT MUST BE PROVIDED.

Findings of Fact by the Industrial Commission are Conclusive on Appeal if Supported by Any Competent Evidence. —
Preparation of a life care plan is not necessary in all workers' compensation cases, but the subject record contained some competent evidence to support the Industrial Commission's finding requiring the employer to pay plaintiff's doctor for the cost of preparing his life care plan. Timmons v. North Carolina DOT, 351 N.C. 177, 522 S.E.2d 62 (1999).

III. REFUSAL TO ACCEPT TREATMENT.

Findings Regarding Willingness to Cooperate. — Where full Commission focused only on defendants' non-compliance and made no finding as to plaintiff's own compliance, or lack thereof, the case had to be remanded for a determination of whether plaintiff affirmatively established her present willingness to cooperate with her employer's offers of medical treatment and rehabilitative services with her authorized physician. Scurlock v. Durham County Gen. Hosp., 136 N.C. App. 144, 523 S.E.2d 439 (1999).

V. SELECTION OF PHYSICIAN BY EMPLOYEE.

Findings Required to Support Approval of Claim for Treatment by Employee's Physician. —
The full Commission made insufficient findings to support its approval of employee's request where employee waited three years to request authorization to use her own physician after she and the employer-approved physician discontinued their relationship. Scurlock v. Durham County Gen. Hosp., 136 N.C. App. 144, 523 S.E.2d 439 (1999).

§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends compensation; autopsy.

CASE NOTES

Stated in Jenkins v. Public Serv. Co. of N.C., 134 N.C. App. 405, 518 S.E.2d 6 (1999), cert. granted, 351 N.C. 106, — S.E.2d — (1999).

§ 97-29. Compensation rates for total incapacity.

CASE NOTES

I. In General.

I. IN GENERAL.

Findings Must Support Award and Commission, Not Court of Appeals, Must Make Findings. — While the Court of Appeals was correct that no finding of fact supported the Industrial Commission's conclusion that plaintiff was totally disabled under this section because his business was not "employment" and his earnings were not "wages," the Court of Appeals erred when it usurped the Commission's fact-finding role and determined that plaintiff's management skills were marketable in the labor market and that plaintiff was "actively involved in the personal management of [his] business." Lanning v. Fieldcrest-Cannon, Inc., — N.C. —, 530 S.E.2d 54, 2000 N.C. LEXIS 434 (2000).

Employee Bore Burden of Rebutting Presumption That She Was Temporarily Partially Disabled. — The plaintiff bore the burden of proving total disability at the hearing before the Commission where—after entering into a Form 21 agreement which did not specifically note the type of disability for which plaintiff was being compensated but in which the weekly compensation rate was fixed at a level equivalent to the amount payable for total disability under this section—she entered a Form 26 agreement which created the presumption that plaintiff was temporarily partially disabled, and not totally disabled. Saunders v. Edenton Ob/Gyn Ctr., — N.C. —, 530 S.E.2d 62, 2000 N.C. LEXIS 439 (2000).

Evidence Sufficient to Support Temporary Total Disability Rating. — Where plaintiff testified that his arm was "no good;" that he had worked as a roofer in the United States, although he had no green card and was not a citizen, since 1995; that he was in continuous pain and had been unable to work since he fell from a forklift; and that his doctor assigned him a 10% impairment rating for his left wrist, the Industrial Commission did not err in assigning plaintiff a rating of temporary total disability under this section. Rivera v. Trapp, 135 N.C. App. 296, 519 S.E.2d 777 (1999).

Return to Work Assertion Does Not Necessarily Raise Wage Earning Capacity Issue. — Where defendants did not assert any other reason for termination of plaintiff's benefits besides "return to work" on the Form 28T, the record revealed that the plaintiff denied that she ever attempted a "trial return to work" and that she, therefore, was not required to file a Form 28U, and it was undisputed that defendants did not file a Form 24 seeking to terminate plaintiff's compensation on grounds other than plaintiff's "return to work", the only issue before the Full Commission was whether or not plaintiff had returned to work, warranting termination of benefits pursuant to N.C. Gen. Stat. § 97-18.1(b); thus it did not consider the issue of whether or not plaintiff had wage earning capacity and neither would the Court of Appeals. Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

Effect of Litigation of Earning Capacity on Review of Form 26 Agreement. — Where plaintiff's earning capacity was actually litigated and necessary to the outcome of his § 97-47 hearing, the Industrial Commission was bound by that finding in determining if a Form 26 agreement was fair and just; therefore, its finding that the agreement was "improvidently approved" on the grounds that plaintiff had no earning capacity, thus qualifying him for benefits under this section, had to be reversed. Lewis v. Craven Regional Medical Ctr., — N.C. App. —, 518 S.E.2d 1 (1999).

Quoted in Timmons v. North Carolina DOT, 351 N.C. 177, 522 S.E.2d 62 (1999).

§ 97-30. Partial incapacity.

CASE NOTES

Presumption of Disability Not Rebutted. — Where the parties executed a Form 21 Agreement relieving the employee of the burden of proving his disability, the fact that plaintiff held a job one year before the matter was initially heard was not sufficient to prove that suitable jobs were available to him and that he was capable of getting one. Flores v. Stacy Penny Masonry Co., 134 N.C. App. 452, 518 S.E.2d 200 (1999).

Stated in Lanning v. Fieldcrest-Cannon, Inc., — N.C. —, 530 S.E.2d 54, 2000 N.C. LEXIS 434 (2000).

Cited in Lewis v. Sonoco Prods. Co., — N.C.

App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

§ 97-31. Schedule of injuries; rate and period of compensation.

CASE NOTES

I. IN GENERAL.

Maximum Medical Improvement. — Evidence indicating that a skin graft would be necessary before a complete healing of plaintiff's foot would occur and the release of plaintiff to work only with certain restrictions supported the finding that plaintiff had not yet reached maximum medical improvement. Davis v. Embree-Reed, Inc., 135 N.C. App. 80, 519 S.E.2d 763 (1999), cert. denied, 351 N.C. 102, — S.E.2d — (1999).

Contrary to the defendants' contention, the plaintiff reached maximum medical improvement—given his refusal to undergo further surgeries recommended by his doctor—with respect to his right and left upper extremities on January 24, 1994 and with respect to all of his injuries, on October 3, 1994 when he was found to be permanently and totally disabled. Aderholt v. A.M. Castle Co., — N.C. App. —, 529 S.E.2d 474, 2000 N.C. App. LEXIS 492 (2000).

Applied in Rivera v. Trapp, 135 N.C. App. 296, 519 S.E.2d 777 (1999).

Quoted in Timmons v. North Carolina DOT, 351 N.C. 177, 522 S.E.2d 62 (1999).

Cited in Lanning v. Fieldcrest-Cannon, Inc., — N.C. —, 530 S.E.2d 54, 2000 N.C. LEXIS 434 (2000).

VIII. BACK.

The Full Industrial Commission erred in concluding that plaintiff was entitled to total and permanent disability benefits where the plaintiff did not meet his burden of showing, as required unless a presumption has been established through the filing of a Form 21, pursuant to § 97-82, that he was totally disabled and therefore unable to earn any of the wages he was receiving at the time of his injury in the same or any other employment. Demery v. Converse, Inc., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 599 (June 6, 2000).

IX. IMPORTANT ORGANS.

The following organs were important within the meaning of this section and the amounts awarded for each were proper and equitable: Pancreas $20,000.00; Lungs ($20,000 for each lung) $40,000.00; Abdominal wall $15,000.00; Omentum $ 10,000.00; Intestines $ 12,000.00; Stomach $ 5,000.00 ; Reproductive organs $15,000.00. Aderholt v. A.M. Castle Co., — N.C. App. —, 529 S.E.2d 474, 2000 N.C. App. LEXIS 492 (2000).

Spleen. — The commission did not err in awarding plaintiff $20,000.00 for the loss of his spleen. The defendants incorrectly asserted that "the spleen does not serve as an 'important' organ" and that its "function to the human body is somewhat illusive;" and that the award of $ 20,000.00 was "excessive and constituted an abuse of discretion." Aderholt v. A.M. Castle Co., — N.C. App. —, 529 S.E.2d 474, 2000 N.C. App. LEXIS 492 (2000).

§ 97-32. Refusal of injured employee to accept suitable employment as suspending compensation.

CASE NOTES

Cited in Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

§ 97-32.1. Trial return to work.

CASE NOTES

Return to Work Assertion Does Not Necessarily Raise Wage Earning Capacity Issue. — Where defendants did not assert any other reason for termination of plaintiff's benefits besides "return to work" on the Form 28T, the record revealed that the plaintiff denied that she ever attempted a "trial return to work" and that she, therefore, was not required to file a Form 28U, and it was undisputed that defendants did not file a Form 24 seeking to terminate plaintiff's compensation on grounds other than plaintiff's "return to work", the only issue before the Full Commission was whether or not plaintiff had returned to work, warranting termination of benefits pursuant to N.C. Gen. Stat. § 97-18.1(b); thus it did not consider the issue of whether or not plaintiff had wage earning capacity and neither would the Court of Appeals. Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

Failure to Submit Properly Completed Form Held Not Reversible Error. — Where Industrial Commission found, based on competent evidence in the record, that plaintiff's return to work was "a failed return to work" due to his work-related compensable injury, defendant's claim that plaintiff's Form 28U was not signed by the appropriate party was valid, but the error was not reversible at that stage of the proceedings. Jenkins v. Public Serv. Co. of N.C., 134 N.C. App. 405, 518 S.E.2d 6 (1999), cert. granted, 351 N.C. 106, — S.E.2d — (1999).

§ 97-36. Accidents taking place outside State; employees receiving compensation from another state.

CASE NOTES

Plaintiff's principal place of employment was within North Carolina where plaintiff was assigned to operate a tractor-trailer in an area consisting of twelve to thirteen southern states but no state, standing alone, had the same degree of significant contacts to plaintiff's employment as North Carolina. Furthermore, the "Policies, Procedures and Agreement" form signed by plaintiff upon being hired was an invalid attempt to limit plaintiff's rights to those enumerated under Arkansas workers' compensation law as well as a violation of § 97-6. Perkins v. Arkansas Trucking Servs., 351 N.C. 634, 528 S.E.2d 902 (2000).

The Court of Appeals erred in applying the "any competent evidence" standard of review to the Industrial Commission's jurisdictional determination under this section; the court should have made its own independent findings of jurisdictional fact. Perkins v. Arkansas Trucking Servs., 351 N.C. 634, 528 S.E.2d 902 (2000).

Commission Had Jurisdiction. — Sufficient evidence existed to support the Industrial Commission's conclusion that plaintiff/truck driver's principal place of employment was within North Carolina and its conclusion that the North Carolina Industrial Commission had jurisdiction over claim between foreign corporation/employer and plaintiff, whose residence was in North Carolina, who conducted various aspects of his business including receipt of assignments, storage and maintenance of truck, receipt of paychecks, etc., in North Carolina, and who made 18-20% of his pick-up stops in North Carolina. Perkins v. Arkansas Trucking Servs., Inc., 134 N.C. App. 490, 518 S.E.2d 36 (1999). But see Hyde v. Chesney Glen Homeowners Ass'n, Inc., — N.C. App. —, 529 S.E.2d 499, 2000 N.C. App. LEXIS 504 (2000).

§ 97-42. Deduction of payments.

CASE NOTES

Less Than 100% Credit Was Within Commission's Authority. —

The Industrial Commission acted within its discretion, pursuant to this section, in reducing defendants' credit for payments made under a disability insurance policy fully funded by defendants by 25% to provide plaintiff's counsel additional fees, although the record on appeal contained no copy of a fee award filed with the Commission as required by § 97-90(c). Cole v. Triangle Brick, — N.C. App. —, 524 S.E.2d 79, 2000 N.C. App. LEXIS 11 (2000).

The defendant/employer was entitled to a credit for disability benefits where the disability compensation plan was entirely funded by the employer and no evidence indicated that the employee contributed to it. Peagler v. Tyson Foods, Inc., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 786 (July 5, 2000).

§ 97-47. Change of condition; modification of award.

CASE NOTES

I. In General.
II. Change of Condition.
III. Time Limitations.

I. IN GENERAL.

The Effect of Litigation of Earning Capacity on Review of Form 26 Agreement. — Where plaintiff's earning capacity was actually litigated and necessary to the outcome of his hearing under this section, the Industrial Commission was bound by that finding in determining if a Form 26 agreement was fair and just; therefore, its finding that the agreement was "improvidently approved" on the grounds that plaintiff had no earning capacity, thus qualifying him for benefits under § 97-29, would be reversed. Lewis v. Craven Regional Medical Ctr., — N.C. App. —, 518 S.E.2d 1 (1999).

Quoted in Lanning v. Fieldcrest-Cannon, Inc., — N.C. —, 530 S.E.2d 54, 2000 N.C. LEXIS 434 (2000).

II. CHANGE OF CONDITION.

The Commission was not required to give weight to potentially damaging evidence elicited by the cross-examination of plaintiff's doctor regarding the etiology of fibromyalgia, nor did it fail to give proper weight to the opinion testimony of another doctor who indicated that plaintiff's current complaints were "not causally related to [her] prior compensable injury." Young v. Hickory Bus. Furn., — N.C. App. —, 527 S.E.2d 344, 2000 N.C. App. LEXIS 263 (2000).

An injured employee's disability rating need not change in order for the court to conclude that she has suffered a substantial change of condition under this section where the evidence indicated that her physical condition changed so as to impact her wage-earning capacity and several doctors testified that her condition had substantially worsened. Young v. Hickory Bus. Furn., — N.C. App. —, 527 S.E.2d 344, 2000 N.C. App. LEXIS 263 (2000).

Evidence Held Sufficient. — Plaintiff met her burden of establishing a causal connection between the fibromyalgia and her compensable injury in terms of "reasonable medical probability." Young v. Hickory Bus. Furn., — N.C. App. —, 527 S.E.2d 344, 2000 N.C. App. LEXIS 263 (2000).

III. TIME LIMITATIONS.

Case Still Pending Under § 97-25. — Where employee's refusal to cooperate with employer's physician resulted in litigation, the plaintiff's claim for further compensation, filed 2 years after her last compensation check, was not time-barred because her claim was not a change-of-condition case under this section, but a case still pending under § 97-25, and defendants' filing of a Form 28B had no effect on employee's right to further compensation. Scurlock v. Durham County Gen. Hosp., 136 N.C. App. 144, 523 S.E.2d 439 (1999).

§ 97-48. Receipts relieving employer; payment to minors; when payment of claims to dependents subsequent in right discharges employer.

CASE NOTES

Appointment of Person to Receive Minor's Death Benefits. — A clerk of Superior Court may not appoint a "general guardian" for a minor if a natural guardian, such as a biological mother, exists; however, a clerk of Superior Court may appoint some other person to receive death benefits on behalf of minor. Valles de Portillo v. D.H. Griffin Wrecking Co., 134 N.C. App. 714, 518 S.E.2d 555 (1999), cert. denied, 351 N.C. 188, — S.E.2d — (1999).

§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.

CASE NOTES

II. SUBDIVISION (13).

What Plaintiff Must Show Under Subdivision (13). — Three elements are necessary to show the existence of a compensable occupational disease under this section: (1) the disease must be characteristic of persons engaged in a particular trade or occupation in which the plaintiff is engaged; (2) the disease must not be an ordinary disease of life to which the public is equally exposed; and (3) there must be a causal connection between the disease and the plaintiff's employment. Jarvis v. Food Lion, Inc., 134 N.C. App. 363, 517 S.E.2d 388 (1999).

III. PARTICULAR DISEASES.

Evidence Insufficient. — Court agreed with Industrial Commission that plaintiff failed to demonstrate that her carpal tunnel syndrome was an occupational disease "which was characteristic of and peculiar to her employment" within the meaning of this section. Jarvis v. Food Lion, Inc., 134 N.C. App. 363, 517 S.E.2d 388 (1999).

Carpal Tunnel Syndrome. — Where plaintiff's doctors failed to testify that her employment as a typist was a significant contributing factor to the development of her carpal tunnel syndrome, the Industrial Commission correctly found that plaintiff was not entitled to benefits. Hardin v. Motor Panels, Inc., — N.C. App. —, 524 S.E.2d 368, 2000 N.C. App. LEXIS 5 (2000), cert. denied, 351 N.C. 473, — S.E.2d — (2000).

§ 97-57. Employer liable.

CASE NOTES

Liability of Employer in Whose Employment Employee Was Last Injuriously Exposed. — Where plaintiff's doctor testified that she had negative Tinel's and Phalen's signs immediately after her resignation from her job but positive bilateral Tinel's and Phalen's signs 15 months after her resignation and after holding various other jobs, the Industrial Commission did not err in finding that she was last "injuriously exposed" to carpal tunnel syndrome while working with her subsequent employers. Hardin v. Motor Panels, Inc., — N.C. App. —, 524 S.E.2d 368, 2000 N.C. App. LEXIS 5 (2000), cert. denied, 351 N.C. 473, — S.E.2d — (2000).

§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to take testimony; meetings; hearings.

CASE NOTES

Quoted in Moore v. City of Raleigh, 135 N.C. App. 332, 520 S.E.2d 133 (1999).

§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.

(a) The Commission may make rules, not inconsistent with this Article, for carrying out the provisions of this Article. The Commission shall request the

Office of State Budget, Planning, and Management to prepare a fiscal note for a proposed new or amended rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Commission shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared.

Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be.

(b) The Commission or any member thereof, or any person deputized by it, shall have the power, for the purpose of this Article, to tax costs against the parties, to administer or cause to have administered oaths, to preserve order at hearings, to compel the attendance and testimony of witnesses, and to compel the production of books, papers, records, and other tangible things.

(c) The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed.

(d) The Commission may order testimony to be taken by deposition and any party to a proceeding under this Article may, upon application to the Commission, which application shall set forth the materiality of the evidence to be given, cause the depositions of witnesses residing within or without the State to be taken, the costs to be taxed as other costs by Commission. Depositions ordered by the Commission upon application of a party shall be taken after giving the notice and in the manner prescribed by law for depositions in action at law, except that they shall be directed to the Commission, the commissioner, or the deputy commissioner before whom the proceedings may be pending.

(e) A subpoena may be issued by the Commission and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the Commission may quash a subpoena if it finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county where the hearing is held.

(f) The Commission may by rule provide for and limit the use of interrogatories and other forms of discovery, and it may provide reasonable sanctions for failure to comply with a Commission order compelling discovery.

(g) The Commission or any member or deputy thereof shall have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to hold a person in civil contempt, as provided thereunder, for failure to comply with an order of the Commission, Commission member, or deputy. A person held in civil contempt may appeal in the manner provided for appeals pursuant to G.S. 97-85 and G.S. 97-86. The provisions of G.S. 5A-24 shall not apply to appeals pursuant to this subsection.

(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for wilful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for wilful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for wilful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, wilful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing de novo before a superior court judge. (1929, c. 120, s. 54; 1977, cc. 456, 505; 1981 (Reg. Sess., 1982), c. 1243, s. 2; 1993, c. 321, s. 25(b); c. 399, s. 1; 1993 (Reg. Sess., 1994), c. 679, ss. 5.3, 5.4; 1995, c. 358, s. 8(a), (b); c. 437, s. 6(a), (b); c. 467, s. 5(a), (b); c. 507, ss. 25.13, 27.8(o); c. 509, s. 48; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, in subsection (a), substituted "Office of State Budget, Planning and Management" for "Office of State Budget and Management."

§ 97-82. Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for approval; direct payment as award.

CASE NOTES

The Full Industrial Commission erred in concluding that plaintiff was entitled to total and permanent disability benefits where the plaintiff did not meet his burden of showing, as required by § 97-31, unless a presumption has been established through the filing of a Form 21, pursuant to this section, that he was totally disabled and therefore unable to earn any of the wages he was receiving at the time of his injury in the same or any other employment. Demery v. Converse, Inc., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 599 (June 6, 2000).

Effect of Litigation of Earning Capacity on Review of Form 26 Agreement. — Where plaintiff's earning capacity was actually litigated and necessary to the outcome of his § 97-47 hearing, the Industrial Commission was bound by that finding in determining if a Form 26 agreement was fair and just; therefore, its finding that the agreement was "improvidently approved" on the grounds that plaintiff had no earning capacity, thus qualifying him for benefits under § 97-29, would be reversed. Lewis v. Craven Regional Medical Ctr., — N.C. App. —, 518 S.E.2d 1 (1999).

Cited in Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

§ 97-83. Commission is to make award after hearing.

CASE NOTES

Cited in Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

§ 97-84. Determination of disputes by Commission or deputy.

CASE NOTES

Applied in Jenkins v. Public Serv. Co. of N.C., 134 N.C. App. 405, 518 S.E.2d 6 (1999), cert. granted, 351 N.C. 106, — S.E.2d — (1999).

Cited in Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

§ 97-85. Review of award.

CASE NOTES

Commission Can Accept Deputy Commissioner's Credibility Determinations. — It was properly within the province of the Commission to elect, in several instances, to accept the deputy commissioner's credibility determinations. Fuller v. Motel 6, — N.C. App. —, 526 S.E.2d 480, 2000 N.C. App. LEXIS 150 (2000).

Deputy Commissioner's Findings of Fact Not Conclusive. —

Adams v. AVX Corp., 349 N.C. 676, 509 S.E.2d 411 (1998), which overruled Sanders v. Broyhill Furniture Industries, 124 N.C. App. 637, 478 S.E.2d 223 (996), which had required the commission to give deference to the credibility findings of the deputy commissioner, was to be applied retroactively to cases remanded by it to the Industrial Commission. Brice v. Sheraton Inn, — N.C. App. —, 527 S.E.2d 323, 2000 N.C. App. LEXIS 258 (2000).

The Industrial Commission's credibility determinations made in response to Sanders v. Broyhill Furn. Indus., 124 N.C. App. 637, 478 S.E.2d 223 cannot be the Court of Appeals' basis for reversing the commission's order absent other error; in other words, if the commission's conclusions are otherwise supported by competent evidence, the court may not scrutinize the commission's reasons for believing a witness while engaged in its fact-finding role and overturn its decision on the basis of those reasons. Deese v. Champion Int'l Corp., — N.C. —, 530 S.E.2d 549, 2000 N.C. LEXIS 432 (2000).

The Industrial Commission erred in deciding not to review the record to determine whether plaintiff's post-traumatic stress disorder caused an aggravation of his diabetes where the defendant's application for review prevented the commissioner's decision from becoming final, and the commission's failed to satisfy its statutory duty when it held that res judicata barred the defendant's appeal on that issue. Lewis v. North Carolina Dep't of Cor., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 616 (June 20, 2000).

Excusable Neglect Not Shown. — The Industrial Commission erred by concluding that excusable neglect existed where plaintiff represented himself before the deputy commissioner and was unacquainted with the complexities of the Workers' Compensation Act; furthermore, the Commission did not have the authority, under Industrial Commission Rule 801, to excuse plaintiff from complying with this section and thus disregard the holdings of the appellate court as to what constituted "excusable neglect." Moore v. City of Raleigh, 135 N.C. App. 332, 520 S.E.2d 133 (1999).

Applied in Smith v. Champion Int'l, 134 N.C. App. 180, 517 S.E.2d 164 (1999); Calloway v. Memorial Mission Hosp., — N.C. App. —, 528 S.E.2d 397, 2000 N.C. App. LEXIS 409 (2000).

§ 97-86. Award conclusive as to facts; appeal; certified questions of law.

CASE NOTES

I. IN GENERAL.

Applied in Smith v. Champion Int'l, 134 N.C. App. 180, 517 S.E.2d 164 (1999); Timmons v. North Carolina DOT, 351 N.C. 177, 522 S.E.2d 62 (1999).

Stated in Perkins v. Arkansas Trucking Servs., 351 N.C. 634, 528 S.E.2d 902 (2000).

II. REVIEW, GENERALLY.

Fact Finding Prerogative Extends to Credibility Determinations. — The Industrial Commission's credibility determinations made in response to Sanders v. Broyhill Furn. Indus., 124 N.C. App. 637, 478 S.E.2d 223 cannot be the Court of Appeals' basis for reversing the commission's order absent other error; in other words, if the commission's conclusions are otherwise supported by competent evidence, the court may not scrutinize the commission's reasons for believing a witness while engaged in its fact-finding role and overturn its decision on the basis of those reasons. Deese v. Champion Int'l Corp., — N.C. —, 530 S.E.2d 549, 2000 N.C. LEXIS 432 (2000).

§ 97-88. Expenses of appeals brought by insurers.

CASE NOTES

Award of Attorneys' Fees Is Within Discretion of Commission. —

In a workers' compensation case involving a Department of Corrections officer's claim for salary continuation, the Industrial Commission could in its discretion award reasonable attorney's fees under § 143-166.19. Ruggery v. North Carolina Dep't of Cors., 135 N.C. App. 270, 520 S.E.2d 77 (1999).

Fees Not Awarded Where Only Claimant Appeals. —

Industrial Commission did not abuse its discretion when it refused to assess attorney's fees against defendants in appeal brought by plaintiff. Valles de Portillo v. D.H. Griffin Wrecking Co., 134 N.C. App. 714, 518 S.E.2d 555 (1999), cert. denied, 351 N.C. 188, — S.E.2d — (1999).

Expenses and Fees Incurred at Appellate Court Level. — Where defendant/insurer appealed deputy commissioner's decision, and then appealed the full Commission's decision, and the court affirmed the prior decisions, the requirements of this section were satisfied and the court granted the plaintiff's request for expenses incurred on appeal, including attorney's fees. Flores v. Stacy Penny Masonry Co., 134 N.C. App. 452, 518 S.E.2d 200 (1999).

Fee Upheld Even Where Appeal Was Made on Reasonable Grounds. — An award of fees under this section is permitted even if the insurer who institutes the proceeding has reasonable grounds, provided the insurer is ordered as a result of the proceeding to make or continue making benefit payments to the injured worker. Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

§ 97-88.1. Attorney's fees at original hearing.

CASE NOTES

Defendants did not have reasonable grounds to appeal opinion and award of the deputy commissioner, and the full Commission did not abuse its discretion in awarding costs to plaintiff under this section; no evidence indicated that defendants were informed by an employer that plaintiff had returned to work, consistent with plaintiff's claim that she had not returned to work. Lewis v. Sonoco Prods. Co., — N.C. App. —, 526 S.E.2d 671, 2000 N.C. App. LEXIS 257 (2000).

Fees Upheld. —

Where employee sought treatment from other physicians for a legitimate injury because the employer-approved physician refused to see him, and where the Industrial Commission subsequently approved this medical treatment within a reasonable time, the Court of Appeals upheld the Commission's finding that the employer unreasonably defended the case and, therefore, should pay an attorney's fee of five hundred dollars. Ruggery v. North Carolina Dep't of Cors., 135 N.C. App. 270, 520 S.E.2d 77 (1999).

Cited in London v. Snak Time Catering, Inc., — N.C. App. —, 525 S.E.2d 203, 2000 N.C. App. LEXIS 102 (2000).

§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation.

CASE NOTES

Less Than 100% Credit Was Within Commission's Authority. —

The Industrial Commission acted within its discretion, pursuant to § 97-42, in reducing defendants' credit for payments made under a disability insurance policy fully funded by defendants by 25% to provide plaintiff's counsel additional fees, although the record on appeal contained no copy of a fee award filed with the Commission as required by this section. Cole v. Triangle Brick, — N.C. App. —, 524 S.E.2d 79, 2000 N.C. App. LEXIS 11 (2000).

Cited in Hieb v. Lowery, 134 N.C. App. 1, 516 S.E.2d 621 (1999); Hansen v. Crystal Ford-

Mercury, Inc., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 628 (June 20, 2000).

§ 97-91. Commission to determine all questions.

CASE NOTES

A health insurer may intervene as a real party in interest in a workers' compensation proceeding when it alleges that it has paid medical expenses due to an employee's compensable injury and is entitled to reimbursement, and liability is disputed by the employer. Hansen v. Crystal Ford-Mercury, Inc., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 628 (June 20, 2000).

§ 97-93. Employers required to carry insurance or prove financial ability to pay for benefits; employers required to post notice; self-insured employers regulated by Commissioner of Insurance.

CASE NOTES

General Contractor Liable for Failure to Bring SubContractor into Compliance. — Where defendant/contractor presented conflicting testimony regarding his knowledge of subcontractor's lack of workers' compensation insurance, the Industrial Commission's findings and conclusions that he willfully neglected to bring the subcontractor into compliance with the requirements of this section would be upheld. Rivera v. Trapp, 135 N.C. App. 296, 519 S.E.2d 777 (1999).

Stated in Reece v. Forga, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 790 (July 5, 2000).

§ 97-94. Employers required to give proof that they have complied with preceding section; penalty for not keeping liability insured; review; liability for compensation; criminal penalties for failure to secure payment of compensation.

CASE NOTES

This Section Does Not Grant the Court Jurisdiction Absent Proof of Noncompliance. — A claim in which the plaintiff/employee alleges only that he sustained injuries due to defendant/employer's negligence while he was performing duties within the course and scope of his employment is within the exclusive jurisdiction of the Industrial Commission and cannot be heard by the court without further evidence that the employer refuses to accept the provisions of this Act. Reece v. Forga, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 790 (July 5, 2000).

Applied in Rivera v. Trapp, 135 N.C. App. 296, 519 S.E.2d 777 (1999).

Chapter 99B.

Products Liability.

§ 99B-1. Definitions.

CASE NOTES

Stated in Red Hill Hosiery Mill v. Magnetek, Inc., — N.C. App. —, 530 S.E.2d 321, 2000 N.C. App. LEXIS 542 (2000).

Chapter 101.

Names of Persons.

§ 101-2. Procedure for changing name; petition; notice.

CASE NOTES

Inquiry into Child's Best Interests Not Appropriate. — The fact that the General Assembly specifically required a "best interests of the child" inquiry in contexts such as termination of parental rights, child custody and placement, parental visitation rights, and even in the change in surname on a birth certificate following legitimization, yet failed to require such inquiry in connection with name changes under this section and § 130A-101(f)(4), was taken as clear evidence of its intent that no such inquiry was required in these contexts. In re Crawford, 134 N.C. App. 137, 517 S.E.2d 161 (1999).

Unless His Name Appears on Birth Certificate After Both Parents Execute Affidavit of Paternity. — Where unmarried parents executed an Affidavit of Paternity and entered respondent's name on the birth certificate as the father, court held that there was no authority, statutory or decisional, permitting petitioner to unilaterally change the name of her son, born out of wedlock and not yet legitimated, absent the father's consent. In re Crawford, 134 N.C. App. 137, 517 S.E.2d 161 (1999), distinguishing In re Dunston, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

Chapter 103.

Sundays, Holidays and Special Days.

§ 103-4. Dates of public holidays.

CASE NOTES

Stated in Kirby v. GE, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 3289 (W.D.N.C. February 9, 2000).

Chapter 104G.

North Carolina Low-Level Radioactive Waste Management Authority Act of 1987.

§§ 104G-1 through 104G-23: Repealed by Session Laws 1999-357, s. 4, effective July 1, 2000.

Chapter 105.

Taxation.

SUBCHAPTER I. LEVY OF TAXES.

Article 2.

Privilege Taxes.

Article 2C.

Alcoholic Beverage License And Excise Taxes.

Part 4. Excise Taxes, Distribution of Tax Revenue.

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Article 2D.

Unauthorized Substances Taxes.

Article 3.

Franchise Tax.

Article 3A.

Tax Incentives for New and Expanding Businesses

[See Editor's note for repeal of this Article.]

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Business And Energy Tax Credits

[See Editor's note for repeal of this Article.]

Article 4.

Income Tax.

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Article 4A.

Withholding; Estimated Income Tax for Individuals.

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Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

Article 5.

Sales and Use Tax.

Article 5A.

North Carolina Highway Use Tax.

Article 5B.

Scrap Tire Disposal Tax.

Article 5C.

White Goods Disposal Tax.

Article 5D.

Dry-cleaning Solvent Tax.

[Repealed effective January 1, 2010].

Article 8E.

Excise Stamp Tax on Conveyances.

Article 9.

General Administration; Penalties and Remedies.

SUBCHAPTER I. LEVY OF TAXES.

§ 105-1. Title and purpose of Subchapter.

Editor's Note. —
Session Laws 1999-395, s. 3.2, as amended by Session Laws 2000-181, s. 2.2, provides for the membership requirements and selection process of the North Carolina Tax Policy Commission. The Speaker of the House of Representatives and President Pro Tempore of the Senate are each responsible for appointing six members to the commission and the Governor is responsible for appointing five members per the guidelines set out by s. 3.2. The deadline for appointments to the Commission is August 31, 2000.

ARTICLE 2.

Privilege Taxes.

§ 105-33. Taxes under this Article.

CASE NOTES

Cited in Chrysler Fin. Co. v. Offerman, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 605 (June 6, 2000).

§ 105-40. Amusements — Certain exhibitions, performances, and entertainments exempt from tax.

The following forms of amusement are exempt from the taxes imposed under this Article:

(1) All exhibitions, performances, and entertainments, except as in this Article expressly mentioned as not exempt, produced by local talent exclusively, for the benefit of religious, charitable, benevolent or educational purposes, as long as no compensation is paid to the local talent.

(2) The North Carolina Symphony Society, Incorporated, as specified in G.S. 140-10.1.

(3) All exhibits, shows, attractions, and amusements operated by a society or association organized under the provisions of Chapter 106 of the General Statutes where the society or association has obtained a permit from the Secretary to operate without the payment of taxes under this Article.

(4) All outdoor historical dramas, as specified in Article 19C of Chapter 143 of the General Statutes.

(5) All elementary and secondary school athletic contests, dances, and other amusements.

(6) The first one thousand dollars ($1,000) of gross receipts derived from dances and other amusements actually promoted and managed by civic organizations when the entire proceeds of the dances or other amusements are used exclusively for civic and charitable purposes of the organizations and not to defray the expenses of the organization conducting the dance or amusement. The mere sponsorship of a dance or another amusement by a civic or fraternal organization does not exempt the dance or other amusement, because the exemption applies only when the dance or amusement is actually managed and conducted by the civic or fraternal organization.

(7) All dances, motion picture shows, and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms, and similar accommodations to organized arts groups and individual artists. This exemption does not apply to athletic events.

(8) A person that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A "teen center" is a fixed facility whose primary purpose is to provide

recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.

(9) All entertainments or amusements offered or given on the Cherokee Indian reservation when the person giving, offering, or managing the entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.

(10) Arts festivals held by a person that is exempt from income tax under Article 4 of this Chapter and that meets the following conditions:
a. The person holds no more than two arts festivals during a calendar year.
b. Each of the person's arts festivals last no more than seven days.
c. The arts festivals are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities.

(11) Community festivals held by a person who is exempt from income tax under Article 4 of this Chapter and that meets all of the following conditions:
a. The person holds no more than one community festival during a calendar year.
b. The community festival lasts no more than seven days.
c. The community festival involves a variety of exhibitions, entertainments, and activities, the majority of which are held outdoors and are open to the public. (1939, c. 158, s. 108; 1998-95, ss. 5.1, 6; 1998-96, s. 2; 1999-337, s. 15(b); 2000-140, s. 61.)

Effect of Amendments. — Session Laws 2000-140, s. 61, effective July 21, 2000, deleted "license" following "exempt from" in the catchline.

§ 105-83. Installment paper dealers.

CASE NOTES

The defendant/finance corporation was not subject to tax assessment under this section for its wholesale installment paper business where the buying and selling of the installment paper took place entirely within a foreign state and its other activities were not incident to the buying and selling of the paper. The defendant's retail installment paper business in North Carolina had no relation to its wholesale installment paper business; and the record contained no evidence that the defendant engaged in the promotion or solicitation of the buying or selling of installment paper in North Carolina. Chrysler Fin. Co. v. Offerman, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 605 (June 6, 2000).

"Engaged in the Business." — The defendant/finance corporation was "engaged in the business of dealing in . . . installment paper" where it purchased credit sale agreements from another corporation although it did so in order to provide dealerships with financing under a wholesale finance plan and not for the purpose of making a profit. Chrysler Fin. Co. v. Offerman, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 605 (June 6, 2000).

§ 105-88. Loan agencies.

(a) Every person, firm, or corporation engaged in any of the following businesses must pay for the privilege of engaging in that business an annual tax of two hundred fifty dollars ($250.00) for each location at which the business is conducted:

(1) The business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or otherwise.

(2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.

(3) The business of pawnbroker regulated under Chapter 91A of the General Statutes.

(b) This section does not apply to banks, industrial banks, trust companies, savings and loan associations, cooperative credit unions, the business of negotiating loans on real estate as described in G.S. 105-41, or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker is required to obtain a privilege license under this section merely because the broker advances the broker's own funds and takes a security interest in real estate to secure the advances and when, at the time of the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount the obligation within the period specified in the arrangement or extensions thereof; or when, at the time of the advance the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of the obligation and does sell the obligation within the period specified in the arrangement or extensions thereof; or because the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above is required to obtain a privilege license under this section.

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the loan, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, the time in which the amount is to be paid, and the rate of interest and discount agreed upon.

(d) A loan made by a person who does not comply with this section is not collectible at law under G.S. 105-269.13.

(e) **(Effective until July 1, 2001)** Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars ($100.00).

(e) **(Effective July 1, 2001)** Counties, cities, and towns may levy a license tax on the business taxed under this section. Except as provided in G.S. 160A-211 and G.S. 153A-152, the tax may not exceed one hundred dollars ($100.00). (1939, c. 158, s. 152; 1967, c. 1080; c. 1232, s. 2; 1973, c. 476, s. 193; 1991, c. 45, s. 4; 1993, c. 539, s. 695; 1994, Ex. Sess., c. 24, s. 14(c); 1998-98, s. 1(g); 1999-438, s. 2; 2000-120, s. 3; 2000-173, s. 2.)

Subsection (e) Set Out Twice. — The first version of subsection (e) set out above is effective until July 1, 2001. The second version of subsection (e) set out above is effective July 1, 2001.

Effect of Amendments. —

Session Laws 2000-120, s. 3, effective July 14, 2000, rewrote subsection (d).

Session Laws 2000-173, s. 2, effective July 1, 2001, substituted "section. Except as provided in G.S. 160A-211 and G.S. 153A-152, the tax may not exceed" for "section not in excess of" in subsection (e).

§ 105-109. Obtaining license and paying tax.

(a) Repealed by Session Laws 1998-95, s. 13, effective July 1, 1999.

(b) License Required. Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession.

(c) Repealed by Session Laws 1998-212, s. 29A.14(a), effective January 1, 1999.

(d) Penalties. The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter.

(e) Local License Taxes. The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the State. (1939, c. 158, s. 187; 1957, c. 859; 1963, c. 294, s. 5; 1973, c. 108, s. 51; c. 476, s. 193; 1993, c. 539, ss. 698, 699; 1994, Ex. Sess., c. 24, s. 14(c); 1998-95, s. 13; 1998-212, s. 29A.14(a).)

Editor's Note. —
The section above is set out to correct an error in subsection (e), as set out in the main volume.

Article 2C.

Alcoholic Beverage License And Excise Taxes.

Part 4. Excise Taxes, Distribution of Tax Revenue.

§ 105-113.82. Distribution of part of beer and wine taxes.

(a) Amount, Method. — The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of Agriculture and Consumer Services under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population.

The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately.

(b) Repealed by Session Laws 2000, c. 173, s. 3, effective August 2, 2000.

(c) Exception. — Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, the revenue shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. — The revenue shall be distributed to cities and counties within 60 days after March 31 of each year.

(e) Population Estimates. — To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Planning Officer.

(f) City Defined. — As used in this section, the term "city" means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. — Funds distributed to a county or city under this section may be used for any public purpose.

(h) Disqualification. — No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999. (1985, c. 114, s. 1; 1987, c. 836, s. 2; 1989 (Reg. Sess., 1990), c. 813, s. 5; 1991, c. 689, s. 28(b); 1993, c. 321, s. 26(g); c. 485, s. 2; 1995, c. 17, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 25.2(a); 1997-261, s. 109; 1999-458, s. 10; 2000-173, s. 3.)

Effect of Amendments. — Session Laws 2000-173, s. 3, effective August 2, 2000, added "in the entire county or city" in subsection (a); repealed subsection (b), regarding reduction in the amount distributed; and inserted "Disqualification" in subsection (h).

Part 5. Administration.

§ 105-113.84. Report of resident brewery, resident winery, or nonresident vendor.

A resident brewery, resident winery, and nonresident vendor must file a monthly report with the Secretary. The report must list the amount of beverages delivered to North Carolina wholesalers and importers during the month. The report is due by the 15th day of the month following the month covered by the report. The report must be filed on a form approved by the Secretary and must contain the information required by the Secretary. (1985, c. 114, s. 1; 1998-95, s. 24; 2000-173, s. 4.)

Effect of Amendments. — Session Laws 2000-173, s. 4, effective August 2, 2000, substituted "Report" for "Invoices; report" in the catchline and rewrote the section.

§ 105-113.85. Discount.

Each wholesaler or importer who remits the excise taxes on malt beverages or wine may deduct from the amount payable by him a discount of four percent (4%). This discount covers losses due to spoilage and breakage, expenses incurred in preparing the records and reports required by this Article, and the expense of furnishing a bond. (1985, c. 114, s. 1; 2000-173, s. 5.)

Effect of Amendments. — Session Laws 2000-173, s. 5, effective August 2, 2000, deleted the former last sentence, which read, "No discount is allowed on taxpaid beverages given as free goods for advertising."

§ 105-113.88. Record-keeping requirements.

A person who is required to file a report or return under this Article must keep a record of all documents used to determine information the person provides in a report or return. The records must be kept for three years from the due date of the report or return to which the records apply. (1939, c. 158, s. 520; 1945, c. 903, s. 1; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 28; 1985, c. 114, s. 1; 2000-173, s. 6.)

Effect of Amendments. — Session Laws 2000-173, s. 6, effective August 2, 2000, rewrote the section.

Article 2D.

Unauthorized Substances Taxes.

§ 105-113.105. Purpose.

CASE NOTES

Federal court's view of this section as a criminal penalty prevented the defendant's subsequent drug conviction from being enhanced with a mandatory life sentence. The court found that such enhancement would be unconstitutional where the state had previously assessed and collected a portion of its drug tax against him with respect to the very drugs at issue in the conviction and where the defendant had not waived his double jeopardy claim because it would have been futile for him to have raised it in state court where the drug tax was not considered a criminal penalty. United States v. Anderson, — F.3d —, 2000 U.S. App. LEXIS 10610 (4th Cir. May 15, 2000).

Double Jeopardy. —
Because the Department of Revenue's collection of unpaid taxes on seized drugs pursuant to this section did not constitute criminal punishment, subsequent marijuana charges were not barred by double jeopardy. State v. Woods, — N.C. App. —, 524 S.E.2d 363, 2000 N.C. App. LEXIS 4 (2000), cert. denied, 351 N.C. 370, — S.E.2d — (2000).

The Controlled Substance Tax Is Not a Criminal Penalty. — Whether challenged in a criminal proceeding or a civil proceeding, the drug tax is not a criminal penalty, and the plaintiff was, therefore, not entitled to the procedural safeguards required for criminal proceedings. (But see Lynn v. West, 134 F.3d 582 (4th Cir. 1998).) Milligan v. North Carolina, 135 N.C. App. 781, 522 S.E.2d 330 (1999).

§ 105-113.106. Definitions.

The following definitions apply in this Article:

(1) Controlled Substance. — Defined in G.S. 90-87.

(2) Repealed by Session Laws 1995, c. 340, s. 1.

(3) Dealer. — Any of the following:

a. A person who actually or constructively possesses more than 42.5 grams of marijuana, seven or more grams of any other controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance that is not sold by weight.

b. A person who in violation of Chapter 18B of the General Statutes possesses illicit spirituous liquor for sale.
c. A person who in violation of Chapter 18B of the General Statutes possesses mash.
d. A person who in violation of Chapter 18B of the General Statutes possesses an illicit mixed beverage for sale.

(4) Repealed by Session Laws 1995, c. 340, s. 1.

(4a) Illicit mixed beverage. — A mixed beverage, as defined in G.S. 18B-101, composed in whole or in part from spirituous liquor on which the charge imposed by G.S. 18B-804(b)(8) has not been paid, but not including a premixed cocktail served from a closed package containing only one serving.

(4b) Illicit spirituous liquor. — Spirituous liquor, as defined in G.S. 105-113.68, not authorized by the North Carolina Alcoholic Beverage Control Commission. Some examples of illicit spirituous liquor are the products known as "bootleg liquor", "moonshine", "non-tax-paid liquor", and "white liquor".

(4c) Local law enforcement agency. — A municipal police department, a county police department, or a sheriff's office.

(4d) Low-street-value drug. — Any of the following controlled substances:
a. An anabolic steroid as defined in G.S. 90-91(k).
b. A depressant described in G.S. 90-89(4), 90-90(4), 90-91(b), or 90-92(a).
c. A hallucinogenic substance described in 90-89(3) or G.S. 90-90(5).
d. A stimulant described in G.S. 90-89(5), 90-90(3), 90-91(j), 90-92(a)(3), or 90-93(a)(3).
e. A controlled substance described in G.S. 90-91(c), (d), or (e), 90-92(a)(3), or (a)(5), or 90-93(a)1.

(5) Repealed by Session Laws 1995, c. 340, s. 1.

(6) Marijuana. — All parts of the plant of the genus Cannabis, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin.

(6a) Mash. — The fermentable starchy mixture from which spirituous liquor can be distilled.

(7) Person. — Defined in G.S. 105-228.90.

(8) Secretary. — Defined in G.S. 105-228.90.

(8a) State law enforcement agency. — Any State agency, force, department, or unit responsible for enforcing criminal laws.

(9) Unauthorized substance. — A controlled substance, an illicit mixed beverage, illicit spirituous liquor, or mash. (1989, c. 772, s. 1; 1993, c. 354, s. 10; 1995, c. 340, s. 1; 1997-292, s. 1; 1999-337, s. 19; 2000-119, ss. 3, 4.)

Effect of Amendments. —
Session Laws 2000-119, ss. 3 and 4, effective December 1, 2000, and applicable to arrests or seizures occurring on or after that date, added subdivisions (4c) and (8a), and recodified former subdivision (4c) as subdivision (4d).

§ 105-113.108. Reports; revenue stamps.

(a) Revenue Stamps. — The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the form prescribed by the Secretary. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Reports. — Every local law enforcement agency and every State law enforcement agency must report to the Department within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the form prescribed by the Secretary and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's social security number, and any other information prescribed by the Secretary. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which a stamp has not been affixed as required by this Article:

(1) More than 42.5 grams of marijuana.
(2) Seven or more grams of any other controlled substance that is sold by weight.
(3) Ten or more dosage units of any other controlled substance that is not sold by weight.
(4) Any illicit mixed beverage.
(5) Any illicit spirituous liquor.
(6) Mash. (1989, c. 772, s. 1; 1995, c. 340, s. 1; 1997-292, s. 1; 2000-119, s. 5.)

Effect of Amendments. —
Session Laws 2000-119, s. 5, effective December 1, 2000, and applicable to arrests or seizures occurring on or after that date, designated the existing paragraph as subsection (a), inserting "Revenue Stamps" as the subsection (a) heading, and added subsection (b).

§ 105-113.111. Assessments.

CASE NOTES

Cited in Milligan v. North Carolina, 135 N.C. App. 781, 522 S.E.2d 330 (1999).

Article 3.

Franchise Tax.

§ 105-114. Nature of taxes; definitions.

(a) Nature of Taxes. — The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named.

(a1) Scope. — The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and
(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which these corporations receive from the government and laws of this State in doing business in this State.

(a2) Condition for Doing Business. — If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article is a condition precedent to the right to continue in the corporate form of organization. If the corporation is not organized under the laws of this State, payment of these taxes is a condition precedent to the right to continue to engage in doing business in this State.

(a3) Tax Year. — The taxes levied in this Article are for the fiscal year of the State in which the taxes become due, except that the taxes levied in G.S. 105-122 are for the income year of the corporation in which the taxes become due.

(a4) No Double Taxation. — G.S. 105-122 does not apply to holding companies taxed under G.S. 105-120.2. G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article.

(b) Definitions. — The following definitions apply in this Article:

(1) City. — Defined in G.S. 105-228.90.

(1a) Code. — Defined in G.S. 105-228.90.

(2) Corporation. — A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term does not include a limited liability company.

(3) Doing business. — Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.

(4) Income year. — Defined in G.S. 105-130.2(5). (1939, c. 158, s. 201; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1965, c. 287, s. 16; 1967, c. 286; 1969, c. 541, s. 6; 1973, c. 1287, s. 3; 1983, c. 713, s. 66; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 2; 1989, c. 36, s. 2; 1989 (Reg. Sess., 1990), c. 981, s. 2; 1991, c. 30, s. 2; c. 689, s. 250; 1991 (Reg. Sess., 1992), c. 922, s. 3; 1993, c. 12, s. 4; c. 354, s. 11; c. 485, s. 5; 1997-118, s. 4; 1998-98, ss. 60, 76; 1999-337, s. 20; 2000-173, s. 8.)

Effect of Amendments. —

Session Laws 2000-173, s. 8, effective August 2, 2000, designated the former last sentence in the first paragraph in subsection (a) as subsection (a1), and inserted "Scope"; redesignated former subdivisions (a)(1) and (2) as present (a1)(1) and (2); designated the former second paragraph in subsection (a) as present subsections (a2) and (a3); in subsection (a2), inserted "Condition for Doing Business"; in subsection (a3), inserted "Tax Year" and made a minor punctuation change; designated the former third paragraph in subsection (a) as present subsection (a4); and in subsection (a4) inserted "No Double Taxation" and deleted "street transportation systems taxed under G.S. 105-120.1 or" following "G.S. 105-122 does not apply to."

§ 105-116. Franchise or privilege tax on electric power, water, and sewerage companies.

(a) Tax. — An annual franchise or privilege tax is imposed on the following:

(1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.

(2), (2a) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999.

(3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.
(4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Part 5 of Article 4 of this Chapter.

(b) Report and Payment. — The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. An electric power company shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A taxpayer is not subject to interest on or penalties for an underpayment of a monthly amount due if the taxpayer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A taxpayer shall submit a report on a form provided by the Secretary. The report shall include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.
(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.
(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.
(4) For an electric power company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a).

A taxpayer must report its gross receipts on an accrual basis. If a taxpayer's report does not state the taxpayer's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the taxpayer's taxable gross receipts to the city.

(c) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999.

(d) Distribution. — Part of the taxes imposed by this section on electric power companies is distributed to cities under G.S. 105-116.1.

(e) Local Tax. — So long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947.

(f) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999. (1939, c. 158, s. 203; 1949, c. 392, s. 2; 1951, c. 643, s. 3; 1955, c. 1313, s. 2; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1965, c. 517; 1967, c. 519, ss. 1, 3; c. 1272, ss. 1, 3; 1971, c. 298, s. 1; c. 833, s. 1; 1973, c. 476, s. 193; c. 537, s. 3; c. 1287, s. 3; c. 1349; 1975, c. 812; 1983 (Reg. Sess., 1984), c. 1097, ss. 2, 16; 1987 (Reg. Sess., 1988), c. 882, s. 4.4; 1989 (Reg. Sess., 1990), c. 813, s. 3; c. 814, s. 10; c. 945, ss. 3, 17; 1991, c. 598, s. 4; c. 689, s. 28(c); 1991 (Reg. Sess., 1992), c. 1007, s. 2; 1993, c. 321, s. 26(h); 1997-118, s. 2; 1997-426, s. 3; 1998-22, s. 2; 1998-98, s. 72; 1998-217, s. 32(a); 2000-140, s. 62.)

Effect of Amendments. — Session Laws 2000-140, s. 62, effective July 21, 2000, deleted "natural gas companies, and regional natural gas districts" following "companies" in subsection (d).

§ 105-116.1. Distribution of gross receipts taxes to cities.

(a) Definitions. — The following definitions apply in this section:

(1) Freeze deduction. — The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. — Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. — The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. — The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year but at least sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(c1) Additional Limited Hold-Harmless Adjustment. — The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1999-2000 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1999-2000 amount with the city's 1990-91 distribution.

(3) If the adjusted 1999-2000 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1999-2000 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1999-2000 distribution.

(d) Allocation of Hold-Harmless Adjustment. — The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsections (c) and (c1) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment.

(e) Disqualification. — No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999. (1997-118, s. 1; 1997-118, s. 1; 1997-426, s. 3.1; 1997-439, s. 3; 1997-456, s. 55.5; 1998-22, s. 3; 1999-458, s. 11; 2000-128, s. 2.)

Editor's Note. —
Session Laws 2000-128, s. 4, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under the statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal."

Effect of Amendments. —
Session Laws 2000-128, s. 2, effective October 1, 2000, and applicable to distributions made on or after that date, inserted "but at least sixty percent (60%) of the amount it received in the 1990-91 fiscal year" in subsection (c); added subsection (c1); substituted "subsections (c) and (c1)" for "subsection (c)" in subdivision (d)(1); and inserted "Disqualification" in subsection (e).

§ 105-119: Repealed by Session Laws 2000-173, s. 7 effective August 2, 2000.

§ 105-120. Franchise or privilege tax on telephone companies.

(a) Tax. — An annual franchise or privilege tax is imposed on a person, firm, or corporation that owns or operates a business entity for the provision of local telecommunications service. The tax is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts. A company's taxable gross receipts are its receipts from providing local telecommunications service, including receipts from rentals and other similar charges, less its receipts from telecommunications access charges. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Part 5 of Article 4 of this Chapter.

(b) Report and Payment. — The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. A company that is liable for an average of less than three thousand dollars ($3,000) a month in tax imposed by this section may, with the approval of the Secretary of Revenue, pay tax quarterly when filing a report. All other companies shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A company is not subject to interest on or penalties for an underpayment of a monthly amount due if the company timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall state the company's gross receipts for the reporting period from providing local telecommunications service and from providing local telecommunications service within each city served. If a company's report does not state the company's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the company's taxable gross receipts to the city. A company shall report its gross receipts on an accrual basis.

(c) Distribution. — Part of the tax imposed by this section is distributed to cities under G.S. 105-116.1.

(c1) Service Charges. — Gross receipts of an entity that provides local telecommunications service do not include 911 charges imposed under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, or wireless Enhanced 911 service charges imposed under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24.

(d) No Local Tax. — Counties and cities may not impose a license, franchise, or privilege tax on a company taxed under this section or under G.S. 105-164.4(a)(4c).

(e) Definitions. — For purposes of this section:

(1) "Local telecommunications service" means telecommunications service provided wholly within a LATA entitling the user to access to a local telephone exchange for the privilege of telephonic quality communication with substantially all persons in the local telephone exchange. Provided, however, local telecommunications service does not include intraLATA or interLATA toll telecommunications service, or private telecommunications service.

(2) "LATA" is a Local Access and Transport Area representing a geographical area comprising one or more telephone exchange areas.

(3) "InterLATA telecommunications" is telecommunications service provided between two or more LATAs.

(4) "Toll telecommunications service" means:

a. A telephonic quality communication for which:

1. There is a toll charge that varies in amount with the distance and elapsed transmission time of each individual communication; and

2. The charge is paid within the United States.

b. A service that entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area that is outside the local telephone exchange.

(5) "Private telecommunications service" means a service furnished to a subscriber that entitles the subscriber to exclusive or priority use of a communications channel or group of channels.

(6) "Telecommunications access charges" means charges paid to a provider of local telecommunications service for access to an interconnection with the local telephone exchange. (1939, c. 158, s. 207; 1949, c. 392, s. 2; 1959, c. 1259, s. 3; 1967, c. 1272, ss. 2, 4; 1971, c. 298, s. 2; 1973, c. 476, s. 193; c. 1287, s. 3; 1983 (Reg. Sess., 1984), c. 1097, ss. 3, 16; 1987, c. 557, ss. 1-3; 1989, c. 582, ss. 2, 3; 1989 (Reg. Sess., 1990), c. 813, s. 4; c. 814, s. 11; c. 945, ss. 4, 17; 1991, c. 689, s. 28(d); 1993, c. 321, s. 26(i); 1997-118, s. 3; 1998-98, s. 72; 1998-158, s. 4; 2000-173, s. 19.(b).)

Effect of Amendments. —

Session Laws 2000-173, s. 19(b), effective August 2, 2000, in subsection (c1), substituted "Service Charges" for "Enhanced 911 Service Charge" and inserted "911 charges imposed under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, or."

§ 105-120.1: Repealed by Session Laws 2000-173, s. 7, effective August 2, 2000.

Article 3A.

Tax Incentives For New And Expanding Businesses.

(See Editor's note for repeal of this Article.)

§ 105-129.2. (See Editor's note for repeal) Definitions.

The following definitions apply in this Article:

(1) Air courier services. — A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

(2) Central office or aircraft facility. — Any of the following:

a. A corporate, subsidiary, or regional managing office, as defined by NAICS.

b. An auxiliary subdivision of an interstate passenger air carrier engaged primarily in centralized training for the carrier at its hub.

c. An auxiliary subdivision of an interstate passenger air carrier engaged primarily in aircraft maintenance and repair services or aircraft rebuilding as defined by NAICS.

(3) Cost. — In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(3a) Customer service center. — An auxiliary subdivision of a telecommunications or financial services company, as defined by NAICS, that is primarily engaged in providing support services to the company's

Article 3A has a delayed repeal date. See notes.

customers by telephone to support products or services of the company. For the purpose of this definition, a subdivision is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

(4) Data processing. — Any of the following industries, as defined by NAICS:
  a. Computer systems design and related services.
  b. Software publishers.
  c. Software reproducing.
  d. Data processing services.
  e. On-line information services.

(5) Development zone. — An area designated as a development zone pursuant to G.S. 105-129.3A.

(5a) Electronic mail order house. — An electronic shopping and mail order house, as defined by NAICS.

(6) Enterprise tier. — The classification assigned to an area pursuant to G.S. 105-129.3.

(7) Full-time job. — A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(8) Hub. — Defined in G.S. 105-164.3.

(8a) Interstate passenger air carrier. — Defined in G.S. 105-164.3.

(9) Large investment. — Defined in G.S. 105-129.4(b1).

(10) Machinery and equipment. — Engines, machinery, equipment, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(11) Manufacturing. — Industries in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.

(11a) NAICS. — The North American Industry Classification System adopted by the United States Office of Management and Budget.

(12) Purchase. — Defined in section 179 of the Code.

(13) Warehousing. — Industries in warehousing and storage subsector 493 as defined by NAICS.

(14) Wholesale trade. — Industries in wholesale trade sector 42 as defined by NAICS. (1996, 2nd Ex. Sess., c. 13, s. 3.3; 1997-277, s. 1; 1998-55, s. 1; 1999-360, ss. 1, 2; 2000-56, ss. 5(a), 5(b); 2000-173, s. 1(a).)

Article Repealed Effective January 1, 2006. — This Article is repealed effective for applications for credits filed under § 105-129.6 on or after January 1, 2006. See § 105-129.2A(a).

Editor's note. —

Session Laws 2000-173, s. 1(a) amended Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3), as amended by Session Laws 1999-360, s. 1, to provide for repeal of this Article as provided within the Article.

Editor's Note. —

Session Laws 2000-173, s. 1(b), codified Session Laws 1997-277, s. 4, as amended by Session Laws 1999-360, s. 18.1, which is noted under this section in the main volume, as § 105-129.2A(b), (c), and (d).

Effect of Amendments. —

Session Laws 2000-56, ss. 5(a) and 5(b), effective for taxable years beginning on or after January 1, 2001, in subdivision (2), substituted "Central office or aircraft facility" for "Central administrative office" as the subdivision heading, substituted "Any" for "Either"in the introductory language, deleted the last sentence of subdivision (2)b., pertaining to the definitions of "hub" and "interstate passenger air carrier," and added subdivision (2)c.; and added subdivisions (8) and (8a).

OPINIONS OF ATTORNEY GENERAL

Regarding an amendment which would extend existing tax benefits to establishments retailing merchandise by mail or electronic media, see opinion of Attorney General to The Honorable Bill Owens, North Carolina General Assembly, N.C. General Assembly, 1999 N.C.A.G. 18 (6/23/99).

§ 105-129.2A. (See Editor's note for repeal) Sunset; studies.

(a) Sunset. — This Article is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006.

(b) Equity Study. — The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. — The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

(1) Study of the distribution of tax incentives across new and expanding industries.

(2) Examination of data on economic recruitment for the period 1994 through 2000 by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. — The Department of Commerce shall report the results of these studies and its recommendations to the 2001 General Assembly by April 1, 2001. (1997-277, s. 4; 1999-360, s. 18.1; 2000-173, ss. 1(b), 1(c).)

Editor's Note. — Session Laws 2000-173, ss. 1(b) and (c), effective August 2, 2000, codified Session Laws 1997-277, s. 4, as amended by Session Laws 1999-360, s. 18.1, as subsections (b), (c), and (d) of this section, adding subsection headings, and added subsection (a); and in subsections (b) and (c), substituted "this Article" for "the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statues."

§ 105-129.3. (See Editor's note for repeal) Enterprise tier designation.

(a) Tiers Defined. — An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

Article 3A has a delayed repeal date. See notes.

(b) Annual Designation. — Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

(b1) Data. — In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One and Two Areas. — Notwithstanding the provisions of this section, a county designated as an enterprise tier one area or an enterprise tier two area may not be redesignated as a higher-numbered enterprise tier area until it has been in its enterprise tier area for at least two consecutive years.

(d) Exception for Two-County Industrial Park. — For the purpose of this Article, an eligible two-county industrial park that meets all of the following conditions has the lower enterprise tier designation of the designations of the two counties in which it is located:

(1) It is located in two contiguous counties, one of which has a lower enterprise tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties.

(4) The county with the lower tier designation contributed at least one-half of the cost of developing the park.

(e) Exceptions for Certain Small Counties. — The following exceptions to the provisions of this section apply to small counties:

(1) A county that meets both of the conditions set out below is designated an enterprise tier one area:

a. Its population is less than 10,000.

b. More than sixteen percent (16%) of its population is below the federal poverty level according to the most recent federal decennial census.

(2) A county that meets both of the conditions set out below has an enterprise tier designation one level below the designation it would otherwise have under subsection (a) of this section:

a. Its population is less than 50,000.

b. More than eighteen percent (18%) of its population is below the federal poverty level according to the most recent federal decennial census.

(3) A county that has a population of less than 25,000 and that would otherwise be designated an enterprise tier four or five area under this section must be designated an enterprise tier three area. (1996, 2nd Ex. Sess., c. 13, s. 3.3; 1997-277, s. 1; 1998-55, s. 1; 1999-360, ss. 1, 2; 1999-456, s. 64; 2000-73, s. 1.)

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

Editor's Note. —

Session Laws 2000-73, s. 2, makes the amendment by Session Laws 2000-73, s. 1 effective June 30, 2000, and, notwithstanding G.S. 105-129.3(b), applicable retroactively to designations for the 2000 and later calendar years.

Effect of Amendments. —

Session Laws 2000-73, s. 1, in subsection (c), inserted "and Two" in the subsection catchline, substituted "a county designated as an enterprise tier one area or an enterprise tier two area" for "an enterprise tier one area," and substituted "been in its enterprise tier area" for "been an enterprise tier area." See editor's note for applicability and effective date.

§ 105-129.3A. (See Editor's note for repeal) Development zone designation.

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

§ 105-129.4. (See Editor's note for repeal) Eligibility; forfeiture.

(a) Type of Business. — A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central office or aircraft facility that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.

(2) Central office or aircraft facility that creates at least 40 new jobs.

(2a) Customer service center located in an enterprise tier one or two area.

(3) Data processing.

(3a) Electronic mail order house that creates at least 250 new jobs and is located in an enterprise tier one or two area.

(4) Manufacturing.

(5) Warehousing.

(6) Wholesale trade.

(a1) New Jobs Defined. — A central office or aircraft facility creates at least 40 new jobs if the taxpayer hires at least 40 additional full-time employees to fill new positions at the office either in the year the taxpayer first uses the property as a central office or aircraft facility or in the preceding 24 months while using temporary space for the central office or aircraft facility functions during completion of the central office or aircraft facility property. An electronic mail order house creates at least 250 new jobs if the taxpayer hires at least 250 additional full-time employees to fill new positions at the house in the two-year period ending on the last day of the taxable year the taxpayer first claims a credit under this Article. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(a2) Expiration. — If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section, the credit expires and the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

(b) Wage Standard. — A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet

Article 3A has a delayed repeal date. See notes.

the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft facility if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. — A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central office or aircraft facility property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

(b2) Health Insurance. — A taxpayer is eligible for a credit for creating jobs or for worker training under this Article if the taxpayer provides health insurance for the positions for which the credit is claimed at the time the taxpayer applies for the credit. A taxpayer is eligible for the other credits under this Article if the taxpayer provides health insurance for all of the full-time positions at the location with respect to which the credit is claimed at the time the taxpayer applies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims an installment or carryforward of a credit allowed under this Article, the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for the jobs for which the credit was claimed or the full-time jobs at the location with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit.

(b3) Environmental Impact. — A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer

Article 3A has a delayed repeal date. See notes.

applies for the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Commerce will provide the Department of Environment and Natural Resources a list of all taxpayers making this certification. The Department of Environment and Natural Resources may conduct random audit checks to verify taxpayers' certifications. The Department of Environment and Natural Resources must notify the Department of Revenue of any taxpayer certifications it determines are not accurate.

(b4) Safety and Health Programs. — A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer applies for the credit, at the business location with respect to which the credit is claimed, the taxpayer has no outstanding citations under the Occupational Safety and Health Act and has had no serious violation as defined in G.S. 95-127 within the last three years. The Secretary of Commerce will provide the Department of Labor a list of all taxpayers making this certification. The Department of Labor may conduct random audit checks to verify taxpayers' certifications. The Department of Labor must notify the Department of Revenue of any taxpayer certifications it determines are not accurate.

(c) Repealed by Session Laws 1998-55, s. 1, effective for taxable years beginning on or after January 1, 1999.

(d) Forfeiture. — A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer forfeits the technology commercialization credit allowed under G.S. 105-129.9A if the taxpayer fails to make the level of investment required by subsection (e) of that section within the required period or if the taxpayer fails to meet the terms of its licensing agreement with a research university. If a taxpayer claimed a twenty percent (20%) technology commercialization credit under G.S. 105-129.9A(d) and fails to make the level of investment required under that subsection within the required period, but does make the level of investment required under subsection (e) of that section within the required period, the taxpayer forfeits one-fourth of the twenty percent (20%) credit.

A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs, the technology commercialization credit, or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the technology commercialization credit or the credit for investing in machinery and equipment was claimed.

Article 3A has a delayed repeal date. See notes.

(e) Change in Ownership of Business. — The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, "acquired" means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars ($100,000,000) and has the majority of its operations located in an enterprise tier one, two, or three area.

(f) Development Zone Project Credit. — Subsections (a) through (b4) of this section do not apply to the credit for development zone projects provided in G.S. 105-129.13. (1996, 2nd Ex. Sess., c. 13, s. 3.3; 1997-277, ss. 1, 2; 1998-55, s. 1; 1999-305, s. 3; 1999-360, ss. 1, 2; 1999-369, s. 5.2; 2000-56, ss. 5(c), 6, 8(c); 2000-140, ss. 92.A(a),(b).)

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

Effect of Amendments. —

Session Laws 2000-56, s. 5(c), as amended by Session Laws 2000-140, s. 92.A(a), effective for taxable years beginning on or after January 1, 2001, substituted "central office or aircraft facility" for "central administrative office" in subsections (a), (a1), (b) and (b1).

Session Law 2000-56, s. 6, effective May 1, 1999, and applicable to acquisitions made on or after that date, rewrote subdivision (e)(3), adding subdivisions (e)(3)a. and b.

Session Laws 2000-56, s. 8(c), effective for taxable years beginning on or after January 1, 2000, added subsection (a2).

Session Laws 2000-140, s. 92.A(b) amends Session Laws 2000-56, s. 10(g), providing for the effective date of subsection (a2), as added by Session Laws 2000-56, s. 8(c).

§ 105-129.5. (See Editor's note for repeal) Tax election; cap; carryforwards.

(a) Tax Election. — The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide the technology commercialization credit allowed in G.S. 105-129.9A between the taxes against which it is allowed. The taxpayer shall elect the percentage of the credit that will be taken against each tax when filing the return on which the credit is first taken. This election is binding. The percentage of the credit elected to be taken against each tax may be carried forward only against the same tax.

Article 3A has a delayed repeal date. See notes.

The taxpayer must take any other credit allowed in this Article against only one of the taxes against which it is allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. — The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year.

(c) Carryforward. — Any unused portion of a credit with respect to a large investment or with respect to the technology commercialization credit allowed in G.S. 105-129.9A may be carried forward for the succeeding 20 years. Any unused portion of a credit may be carried forward for the succeeding 10 years if the Secretary of Commerce certifies when an application for the credit is first made that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least fifty million dollars ($50,000,000) worth of one or more of the following: real property, machinery and equipment, or central office or aircraft facility property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits this enhanced carryforward period. Any unused portion of any other credit may be carried forward for the succeeding five years. (1996, 2nd Ex. Sess., c. 13, s. 3.3; 1997-277, s. 1; 1998-55, s. 1; 1999-305, s. 4; 1999-360, ss. 1, 2; 2000-56, s. 2.)

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

Effect of Amendments. —

Session Laws 2000-56, s. 2, effective for taxable years beginning on or after January 1, 2000, added "carryforwards" to the section heading; added subsection (c), transferring the former last two sentences in subsection (b) to be the present first and last sentences in subsection (c); and made stylistic changes.

§ 105-129.6. (See Editor's note for repeal) Application; reports.

(a) Application. — To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. In addition, the application must state the number of full-time jobs to be created that are located within a development zone, the number of full-time jobs to be created that are expected to be filled by employees residing within the development zone, and the number of full-time jobs to be created that are expected to be filled by employees residing within a census tract or census block group that has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility

Article 3A has a delayed repeal date. See notes.

requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. — When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of five hundred dollars ($500.00) for each credit the taxpayer intends to claim with respect to a location that is in an enterprise tier three, four, or five area, subject to a maximum fee of one thousand five hundred dollars ($1,500) per taxpayer per taxable year. This fee does not apply to any credit the taxpayer intends to claim with respect to a location that is in a development zone as defined in G.S. 105-129.3A. If the taxpayer applies for certification for a credit that relates to locations in more than one enterprise tier area, the fee is based on the highest-numbered enterprise tier area.

The Secretary of Commerce shall retain one-fourth of the proceeds of the fee imposed in this section for the costs of administering this section. The Secretary of Commerce shall credit the remaining proceeds of the fee imposed in this section to the Department of Revenue for the costs of administering and auditing the credits allowed in this Article. The proceeds of the fee are receipts of the Department to which they are credited.

(b) Reports. — The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.
(4) The number of new jobs created within development zones, and the percentage of those jobs that were filled by residents of the zones. (1996, 2nd Ex. Sess., c. 13, s. 3.3; 1997-277, s. 1; 1998-55, s. 1; 1999-360, ss. 1, 2; 2000-56, s. 1(a).)

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

Effect of Amendments. —

Session Laws 2000-56, s. 1(a), effective January 1, 2001, and applicable to applications made on or after that date, inserted the second sentence in the first paragraph in subsection (a1).

§ 105-129.7. (See Editor's note for repeal) Substantiation.

(a) To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Each taxpayer must provide with the tax return qualifying information for each credit claimed under this Article for the first taxable year the credit is

Article 3A has a delayed repeal date. See notes.

claimed and for every year in which a subsequent installment or a carryforward of that credit is claimed. The qualifying information must be in the form prescribed by the Secretary, must cover each taxable year beginning with the first taxable year the credit is claimed, and must be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for an initial credit and any installments and carryforwards, and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the enterprise tier designation of the location and whether it is in a development zone. In addition, for each individual who fills a job at a location with respect to which a credit is claimed, the place where the individual resided before taking the job, including any enterprise tier or development zone designation of that place.

(2) The type of business with respect to which the credit is claimed, as required by G.S. 105-129.4(a), and wage information described in G.S. 105-129.4(b).

(3) If the credit is claimed with respect to a large investment certified under G.S. 105-129.4(b1) or is a credit with a carryforward period of 10 years under G.S. 105-129.5(c), the amount of the investment requirement under those subsections that has been met to date.

(4) Qualifying information required for the credit for creating jobs allowed under G.S. 105-129.8, the credit for investing in machinery and equipment allowed under G.S. 105-129.9, the credit for worker training allowed under G.S. 105-129.11, the credit for investing in central office or aircraft facility property allowed in G.S. 105-129.12, and any other credits allowed under this Article. (1996, 2nd Ex. Sess., c. 13, s. 3.3; 1997-277, s. 1; 1999-360, ss. 1, 2; 2000-56, s. 5(d).)

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

Effect of Amendments. —

Session Laws 2000-56, s. 5(d), effective for taxable years beginning on or after January 1, 2001, in subdivision (b)(3), inserted "or is a credit with a carryforward period of 10 years under G.S. 105-129.5(c)" and substituted "those subsections" for "that subsection"; and substituted "central office or aircraft facility" for "central administrative office" in subdivision (b)(4).

§ 105-129.8. (See Editor's note for repeal) Credit for creating jobs.

(a) Credit. — A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more full-time employees, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	*Amount of Credit*
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

Article 3A has a delayed repeal date. See notes.

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. — A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3. (1987, c. 568, ss. 1, 2; 1989, c. 111, ss. 1, 2; c. 751, ss. 7(6), 7(7), 8(10), 8(11); c. 753, s. 4.1(a)-(d); 1989 (Reg. Sess., 1990), c. 814, s. 14; 1991, c. 517, ss. 1-3; 1991 (Reg. Sess., 1992), c. 959, ss. 20, 21; 1993, c. 45, ss. 1, 2; c. 485, ss. 7, 11; 1995, c. 370, ss. 5, 6; 1996, 2nd Ex. Sess., c. 13, ss. 3.2-3.4; 1997-277, s. 1; 1998-55, s. 1; 1999-360, s. 1; 2000-56, s. 8(a); 2000-140, s. 92.A(b).)

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

Effect of Amendments. —

Session Laws 2000-56, s. 8(a), effective for taxable years beginning on or after January 1, 2000, substituted "has five or more full-time employees" for "has five or more employees for at least 40 weeks during taxable year" in subsection (a).

Session Laws 2000-140, s. 92.A(b) amends Session Laws 2000-56, s. 10(g), providing for the effective date of the amendment to subsection (a) by Session Laws 2000-56, s. 8(a).

§ 105-129.9. (See Editor's note for repeal) Credit for investing in machinery and equipment.

(a) General Credit. — If a taxpayer that has purchased or leased eligible machinery and equipment places them in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment are eligible if they are capitalized by the taxpayer for tax purposes under the Code and not leased to another party. In addition, in the case of a large investment, machinery and equipment that are not capitalized by the taxpayer are eligible if the taxpayer leases them from another party. The credit may not be taken for the taxable year in which the machinery and equipment are placed in service but shall be taken in equal installments over the seven years following the taxable year in which they are placed in service.

(a1) Technology Commercialization Credit. — If a taxpayer is eligible for the credit allowed in this section with respect to eligible machinery and equipment and qualifies for one of the credits allowed in G.S. 105-129.9A with respect to the same machinery and equipment, the taxpayer may choose to take one of those credits instead of the credit allowed in this section. A taxpayer may take the credit allowed in this section or one of the credits allowed in G.S. 105-129.9A during a taxable year with respect to eligible machinery and equipment, but may not take more than one of these credits with respect to the same machinery and equipment.

(b) Eligible Investment Amount. — The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that are in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that were in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State. A taxpayer that claims a credit under this section must include with the application for certification required under G.S. 105-129.6(a) specific documentation supporting the taxpayer's calculation of the eligible investment amount under this subsection.

(c) Threshold. — The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	*Threshold*
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. — If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit for that machinery and equipment unless the cost of that machinery and

Article 3A has a delayed repeal date. See notes.

equipment is offset in the same taxable year by the taxpayer's new investment in eligible machinery and equipment placed in service in the same enterprise tier, as provided in this subsection. If, during the taxable year the taxpayer disposed of the machinery and equipment for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same enterprise tier as the machinery and equipment that were disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the machinery and equipment that were disposed of, then the taxpayer forfeits the remaining installments of the credit for the machinery and equipment that were disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the machinery and equipment that were disposed of, or if there is no net reduction, then the taxpayer does not forfeit the remaining installments of the expired credit. In determining the amount of any net reduction during the taxable year, the cost of machinery and equipment the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible machinery and equipment that are in service. If in a single taxable year machinery and equipment with respect to two or more credits in the same tier are disposed of, the net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same tier is compared to the total cost of all the machinery and equipment for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. — A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection. (1996, 2nd Ex. Sess., c. 13, s. 3.3; 1997-277, s. 1; 1998-55, s. 1; 1999-305, s. 1; 1999-360, ss. 1, 2; 2000-56, s. 8(b); 2000-140, s. 92.A(b); 2000-173, s. 1(a).)

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

Effect of Amendments. —

Session Laws 2000-56, s. 8(b), effective for taxable years beginning on or after January 1, 2000, rewrote subsection (d).

Session Laws 2000-140, s. 92.A(b) amends Session Laws 2000-56, s. 10(g), providing for the effective date of the amendment to subsection (d) by Session Laws 2000-56, s. 8(b).

§ 105-129.9A. (See Editor's note for repeal) Technology commercialization credit.

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

§ 105-129.10. (See Editor's note for repeal) Credit for research and development.

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

§ 105-129.11. (See Editor's note for repeal) Credit for worker training.

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

§ 105-129.12. (See Editor's note for repeal) Credit for investing in central office or aircraft facility property.

(a) Credit. — If a taxpayer that has purchased or leased real property in this State begins to use the property as a central office or aircraft facility during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central office or aircraft facilities on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central office or aircraft facilities on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central office or aircraft facilities. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central office or aircraft facility if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central office or aircraft facility is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central office or aircraft facility but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central office or aircraft facility. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. — If the taxpayer uses only part of the property as the taxpayer's central office or aircraft facility, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central office

Article 3A has a delayed repeal date. See notes.

or aircraft facility and the denominator of which is the total square footage of the property.

(c) Expiration. — If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central office or aircraft facility, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central office or aircraft facility, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central office or aircraft facilities in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5. (1997-277, s. 1; 1998-55, s. 1; 1999-360, s. 1; 2000-56, s. 5(e).)

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

Effect of Amendments. —

Session Laws 2000-56, s. 5(e), effective for taxable years beginning on or after January 1, 2001, substituted "central office or aircraft facility" for "central administrative office" throughout the section.

§ 105-129.13. (See Editor's note for repeal) Credit for development zone projects.

(a) Credit. — A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to twenty-five percent (25%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project and agrees in the contract to repay to the taxpayer, with interest, any part of the contribution not used for the project. The credit may not be taken for the year in which the contribution is made but must be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in this section.

(b) Definitions. — The following definitions apply in this section:

(1) Community development corporation. — A nonprofit corporation that meets all of the following conditions:

a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.

b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.

c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.

d. Its primary function is to act as deal maker and packager of projects and activities that will increase its constituency's opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.

Article 3A has a delayed repeal date. See notes.

(2) Community development purpose. — A purpose for which a city is authorized to expend funds under G.S. 160A-456, 160A-457, and 160A-457.2.

(3) Control. — A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(4) Development zone agency. — Any of the following agencies that the Department of Commerce certifies will undertake an improvement project in a development zone:

a. A community-based development organization qualified under 24 C.F.R. § 570.204 to receive community development block grant funds under the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301, et seq., to carry out a neighborhood revitalization project, a community economic development project, or an energy conservation project.

b. A community action agency that has been officially designated as such pursuant to section 210 of the Economic Opportunity Act of 1964, Public Law 88-452, 78 Stat. 508 and which has not lost its designation as a result of a failure to comply with the provisions of that act.

c. A community development corporation.

d. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. § 4701, et seq.

e. A community housing development organization qualified under the HOME Investment Partnerships Act, 42 U.S.C. §§ 12701, 12704, and 24 C.F.R. § 92.2.

f. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.

(5) Improvement project. — A project to construct or improve real property for community development purposes or to acquire real property and convert it for community development purposes. Construction or improvement includes services provided by a development zone agency directly related to the construction or improvement, and project development fees charged by a developer for the construction or improvement.

(c) Certification. — Before certifying that a development zone agency will undertake an improvement project in a development zone, the Secretary must require the agency to provide sufficient documentation to establish the identity of the agency, the nature of the project, and that the project is for a community development purpose and is located in a development zone. The Secretary of Commerce shall not certify a development zone agency under this section if the agency, any of the agency's officers or directors, or any partner of the agency has ever used any part of a contribution made under this section for any purpose other than an improvement project.

(d) Limitations. — A taxpayer who claims a credit under this subsection must identify in the application the development zone agencies to which the taxpayer made contributions and the amount contributed to each. No credit is allowed for a contribution if the taxpayer has one of the relationships defined in section 267(b) of the Code with the development zone agency or if the taxpayer controls, is controlled by, or is under common control with an affiliate of the development zone agency. No credit is allowed to the extent the taxpayer receives anything of value in exchange for the contribution.

(e) Application. — To be eligible for the tax credit provided in this section, in addition to the application required under G.S. 105-129.6, the taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application must be on a form prescribed by the Secretary and must include any supporting documentation that the Secretary may require. If a contribution for which a credit is applied for was of property rather than cash, the taxpayer must include with the application a certified appraisal of the value of the property contributed. There is no fee for an application under this section.

(f) Ceiling. — The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed four million dollars ($4,000,000). The Secretary of Revenue must calculate the total amount of tax credits claimed from the applications filed under this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds four million dollars ($4,000,000), the Secretary must allow a portion of the credits claimed by allocating a total of four million dollars ($4,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary must notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the application was filed. The Secretary's allocations based on applications filed pursuant to this section are final and will not be adjusted to account for credits applied for but not claimed.

(g) Forfeiture. — A taxpayer forfeits a credit allowed under this section to the extent the development zone agency uses the taxpayer's contribution for any purpose other than an improvement project. Each development zone agency certified by the Department of Commerce must file with the Department of Commerce annual financial statements audited in accordance with generally accepted accounting principles and in accordance with Government Audit Standards developed by the Comptroller General of the United States. The annual statements are required each time the agency receives a contribution eligible for the credit allowed under this section until the entire contribution has been used for improvement projects. If the Department of Commerce determines that a development zone agency has used part or all of a contribution for any purpose other than an improvement project, the Department must notify the Secretary of Revenue of the forfeiture, the taxpayer who made the contribution, and the amount forfeited. (1999-360, ss. 1, 2; 2000-56, s. 1(b).)

Cross References. — For delayed repeal of Article 3A, see § 105-129.2A(a).

Effect of Amendments. — Session Laws 2000-56, s. 1(b), effective January 1, 2001, and applicable to applications made on or after that date, added the last sentence in subsection (e).

Article 3B.

Business And Energy Tax Credits.

(See Editor's note for repeal of this Article)

§ 105-129.15. (See Editor's note for repeal) Definitions.

Article Has a Delayed Repeal Date. — For repeal of this Article, see § 105-129.15A.

Editor's Note. —

Session Laws 2000-173, s. 1(a) amended Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3), as amended by Session Laws 1999-360, s. 1, to provide for repeal of this Article as provided within the Article.

§ 105-129.15A. Sunset.

G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of this Article is repealed effective January 1, 2006. The repeal of G.S. 105-129.16A applies to renewable energy property placed in service on or after January 1, 2006. The repeal of G.S. 105-129.16B applies to buildings to which federal credits are allocated on or after January 1, 2006. (2000-173, s. 1(d).)

Editor's Note. — Session Laws 2000-173, s. 20, made this section effective August 2, 2000.

§ 105-129.16. (See Editor's note for repeal) Credit for investing in business property.

Cross References. — For delayed repeal of Article 3B, see § 105-129.15A.

§ 105-129.16A. (See Editor's note for repeal) Credit for investing in renewable energy property.

Cross References. — For delayed repeal of Article 3B, see § 105-129.15A.

§ 105-129.16B. (See Editor's note for repeal) Credit for low-income housing.

(a) **(Effective until July 1, 2005)** Credit. — A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) or (c)(1a) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).

Article 3B has a delayed repeal date. See notes.

(a) **(Effective July 1, 2005)** Credit. — A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).

(b) Timing. — The credit must be taken in equal installments over the five years beginning in the first taxable year in which the federal credit is claimed for that building. During the first taxable year in which the credit allowed under this section may be taken with respect to a building, the amount of the installment must be multiplied by the applicable fraction under section 42(f)(2)(A) of the Code. Any reduction in the amount of the first installment as a result of this multiplication is carried forward and may be taken in the first taxable year after the fifth installment is allowed under this section.

(c) Definitions. — The definitions in section 42 of the Code apply in this section. In addition, as used in this section the term "qualified North Carolina low-income building" means a qualified low-income building that was allocated a federal credit under section 42(h)(1) of the Code, was not allowed a federal credit under section 42(h)(4) of the Code, and meets any of the following conditions:

(1) It is located in an area that, at the time the federal credit is allocated to the building, is a tier one or two enterprise area, as defined in G.S. 105-129.3.

(1a) **(Expires July 1, 2005)** It is located in a county that, at the time the federal credit is allocated to the building, has been designated as having sustained severe or moderate damage from a hurricane or a hurricane-related disaster, according to the Federal Emergency Management Agency impact map, revised on September 25, 1999. Those counties are Bertie, Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Dare, Duplin, Edgecombe, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pasquotank, Pender, Pitt, Washington, Wayne, and Wilson Counties.

(2) It is located in an area that, at the time the federal credit is allocated to the building, is a tier three or four enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income as defined in the Code.

(3) It is located in an area that, at the time the federal credit is allocated to the building, is a tier five enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income as defined in the Code.

(d) Expiration. — If, in one of the five years in which an installment of the credit under this section accrues, the taxpayer is no longer eligible for the corresponding federal credit with respect to the same qualified North Carolina low-income building, then the credit under this section expires and the taxpayer may not take any remaining installment of the credit. If, in one of the

Article 3B has a delayed repeal date. See notes.

five years in which an installment of the credit under this section accrues, the building no longer qualifies as a low-income building under subdivision (2) or (3) of subsection (c) of this section because less than forty percent (40%) of its residential units are both rent-restricted and occupied by individuals who meet the income requirements, then the credit under this section expires and the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(e) Forfeiture. — If the taxpayer is required under section 42(j) of the Code to recapture all or part of a federal credit under that section with respect to a qualified North Carolina low-income building, the taxpayer forfeits the corresponding part of the credit allowed under this section with respect to that qualified North Carolina low-income building. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (1999-360, s. 11; 2000-56, s. 7; 2000-140, s. 88.)

Cross References. — For delayed repeal of Article 3B, see § 105-129.15A.

Editor's Note. —

Session Laws 2000-56, s. 10(f), makes the amendment to subsection (d) by s. 7 of the act effective for taxable years beginning on or after January 1, 2000, and makes the amendment to subsection (a) and the addition of subdivision (c)(1a) effective for taxable years beginning on or after January 1, 2001, and applicable to buildings to which federal credits are allocated on or after that date. Section 10(f) provides for the expiration of the amendment to subsection (a) and the addition of subdivision (c)(1a) on January 1, 2005.

Session Laws 2000-140, s. 88, effective July 21, 2000, rewrites Session Laws 1999-360, s. 33, to read: "Part III of this act is effective for taxable years beginning on or after January 1, 2000. Sections 10 through 15 of Part III [which affected the head to Article 3B and §§ 105-129.16B, 105-129.17, 105-129.18, and 105-129.19] apply to buildings to which federal credits are allocated on or after January 1, 2000."

Effect of Amendments. — Session Laws 2000-56, s. 7, effective for taxable years beginning on or after January 1, 2001, and applicable to buildings to which federal credits are allocated on or after January 1, 2001, in the last sentence of subsection (a), inserted "or (c)(1a)" following "condition (c)(1)"; and added subdivision (c)(1a). For expiration of this amendment, see the editor's note.

Session Laws 2000-56, s. 7, effective for taxable years beginning on or after January 1, 2000, added the second sentence in subsection (d).

§ 105-129.16C. (Effective July 1, 2001 - See editor's note for repeal) Credit for investing in dry-cleaning equipment that does not use a hazardous substance.

(a) Credit. — If a taxpayer that has purchased or leased qualified dry-cleaning equipment, places it in service in this State for commercial purposes during the taxable year, the taxpayer is allowed a credit equal to twenty percent (20%) of the cost of the equipment. To support the credit allowed by this section, the taxpayer must file with the tax return for the taxable year in which the credit is claimed a certification by the Department of Environment and Natural Resources that the equipment purchased or leased by the taxpayer is qualified dry-cleaning equipment.

Article 3B has a delayed repeal date. See notes.

(b) Restrictions. — No credit is allowed under this section to the extent the cost of the equipment was paid with public funds. A taxpayer that claims any other credit allowed under this Chapter with respect to qualified dry-cleaning equipment may not take the credit allowed in this section with respect to the same equipment.

(c) Definitions. — The following definitions apply only in this section:

(1) Hazardous solvent. — A solvent, any portion of which consists of a chlorine-based solvent, a hydrocarbon-based solvent, a hazardous substance as defined in G.S. 130A-310(2), or any substance determined by the Administrator of the Environmental Protection Agency or the Director of the National Institute of Occupational Safety and Health to possess carcinogenic potential to humans.

(2) Qualified dry-cleaning equipment. — Equipment that is designed and used primarily to dry-clean clothing and other fabric and does not use any hazardous solvent or any other substance that the Department of Environment and Natural Resources determines to pose a threat to human health or the environment. (2000-160, s. 1.)

Cross References. — For delayed repeal of Article 3B, see § 105-129.15A.

Editor's Note. — Session Laws 2000-160, s. 1, makes this section effective for taxable years beginning on or after July 1, 2001.

§ 105-129.17. (See Editor's note for repeal) Tax election; cap.

(a) Tax Election. — The credits allowed in this Article are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax.

(b) Cap. — The credits allowed in this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credits may be carried forward for the succeeding five years. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1999-342, s. 2; 1999-360, ss. 1, 13; 2000-140, ss. 63(a), 88.)

Cross References. — For delayed repeal of Article 3B, see § 105-129.15A.

Editor's Note. —

Session Laws 2000-140, s. 88, effective July 21, 2000, rewrites Session Laws 1999-360, s. 33 to read: "Part III of this act is effective for taxable years beginning on or after January 1, 2000. Sections 10 through 15 of Part III [which affected the head to Article 3B and §§ 105-129.16B, 105-129.17, 105-129.18, and 105-129.19] apply to buildings to which federal credits are allocated on or after January 1, 2000."

Effect of Amendments. —

Session Laws 2000-140, s. 63(a), effective July 21, 2000, substituted "The credits" for "A total credits" in subsection (b).

§ 105-129.18. Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a

Article 3B has a delayed repeal date. See notes.

credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1999-342, s. 2; 1999-360, ss. 1, 14; 2000-140, ss. 63(b), 88.)

Cross References. — For delayed repeal of Article 3B, see § 105-129.15A.

Editor's Note. —

Session Laws 2000-140, s. 88, effective July 21, 2000, rewrites Session Laws 1999-360, s. 33, to read: "Part III of this act is effective for taxable years beginning on or after January 1, 2000. Sections 10 through 15 of Part III [which affected the head to Article 3B and §§ 105-129.16B, 105-129.17, 105-129.18, and 105-129.19] apply to buildings to which federal credits are allocated on or after January 1, 2000."

Effect of Amendments. —

Session Laws 2000-140, s. 63(b), effective July 21, 2000, substituted "To claim a credit" for "To claim a credits."

§ 105-129.19. (See Editor's note for repeal) Reports.

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the credits allowed in this Article.

(2) The cost of business property and renewable energy property with respect to which credits were claimed.

(2a) The location of each qualified North Carolina low-income building with respect to which a low-income housing credit was claimed.

(3) The total cost to the General Fund of the credits claimed. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1999-342, s. 2; 1999-360, ss. 1, 15; 2000-140, ss. 63(c), 88.)

Cross References. — For delayed repeal of Article 3B, see § 105-129.15A.

Editor's Note. —

Session Laws 2000-140, s. 88, effective July 21, 2000, rewrites Session Laws 1999-360, s. 33, to read: "Part III of this act is effective for taxable years beginning on or after January 1, 2000. Sections 10 through 15 of Part III [which affected the head to Article 3B and §§ 105-129.16B, 105-129.17, 105-129.18, and 105-129.19] apply to buildings to which federal credits are allocated on or after January 1, 2000."

Effect of Amendments. —

Session Laws 2000-140, s. 63(c), effective July 21, 2000, deleted "business property" preceding "credits" in subdivision (2).

Article 4.

Income Tax.

Part 1. Corporation Income Tax.

§ 105-130. Short title.

Editor's Note. — Session Laws 2000-151, s. 6.1 authorizes the Department of Revenue to draw from collections under Article 4 of Chapter 105 of the General Statutes for the 2000-

2001 fiscal year its actual costs of implementing G.S. 14-306.1(e1) as enacted by Session Laws 2000-151, which bans the introduction of new video gaming machines into the state.

Legal Periodicals. —

For note, "A Matter of (Statutory) Interpretation: North Carolina Recognizes the Functional Test for Corporate Taxation in Polaroid Corp. v. Offerman," see 77 N.C. L. Rev. 2326 (1999).

§ 105-130.3A. Expired.

Editor's Note. — This section expired for taxable years beginning on or after January 1, 1995, pursuant to Session Laws 1991, c. 689, s. 357(2).

§ 105-130.4. Allocation and apportionment of income for corporations.

(a) As used in this section, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the corporation's regular trade or business operations.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) "Excluded corporation" means any corporation engaged in business as a building or construction contractor, a securities dealer, a loan company or a corporation which receives more than fifty percent (50%) of its ordinary gross income from investments in and/or dealing in intangible property.

(5) "Nonbusiness income" means all income other than business income.

(6) "Public utility" means any corporation that is subject to control of one of more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Interstate Commerce Commission, the Federal Power Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State.

(7) "Sales" means all gross receipts of the corporation except for the following receipts:

a. Receipts from a casual sale of property.

b. Receipts allocated under subsections (c) through (h) of this section.

c. Receipts exempt from taxation.

d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

(8) "Casual sale of property" means the sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.

(9) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this section. For purposes of allocation and apportionment, a corporation is taxable in another state if (i) the corporation's business activity in that state subjects it to a net income tax or a tax measured by net income, or (ii) that state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction. For purposes of this section, "business activity" includes any activity by a corporation that would establish a taxable nexus pursuant to 15 United States Code section 381.

(c) Rents and royalties from real or tangible personal property, gains and losses, interest, dividends less the portion deductible under G.S. 105-130.7, patent and copyright royalties and other kinds of income, to the extent that they constitute nonbusiness income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section.

(d)(1) Net rents and royalties from real property located in this State are allocable to this State.

(2) Net rents and royalties from tangible personal property are allocable to this State:

a. If and to the extent that the property is utilized in this State, or

b. In their entirety if the corporation's commercial domicile is in this State and the corporation is not organized under the laws of, or is not taxable in, the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the income year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(e)(1) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.

(2) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if

a. The property had a situs in this State at the time of the sale, or

b. The corporation's commercial domicile is in this State and the corporation is not taxable in the state in which the property has a situs.

(3) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the corporation's commercial domicile is in this State.

(f) Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State. For purposes of this section, the term "net dividends" means gross dividend income received less related expenses and less that portion of the dividends deductible under G.S. 105-130.7.

(g)(1) Royalties or similar income received from the use of patents, copyrights, secret processes and other similar intangible property are allocable to this State:

a. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in this State, or

b. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(2) A patent, secret process or other similar intangible property is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, processing, or other use in the state or to the extent that a patented product is produced in the state. If the basis of receipts from such intangible property does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the intangible property is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h) The income less related expenses from any other nonbusiness activities or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments are located in this State.

(i) All business income of corporations other than public utilities and excluded corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. Provided, that where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.

(j)(1) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year.

(2) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals except that subrentals shall not be deducted when they constitute business income. Any property under construction and any property the income from which constitutes nonbusiness income shall be excluded in the computation of the property factor.

(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

(k)(1) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the income year by the corporation as compensation, and the denominator of which is the total compensation paid everywhere during the income year. All compensation paid to general executive officers and all compensation paid in connection with nonbusiness income shall be excluded in computing the payroll factor. General executive officers shall include the chairman of the board, president, vice-presidents, secretary, treasurer, comptroller, and any other officers serving in similar capacities.

(2) Compensation is paid in this State if:

a. The individual's service is performed entirely within the State; or

b. The individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

c. Some of the service is performed in this State and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this State, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(*l*)(1) The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of nonbusiness income, all sales shall be treated as having been made in this State.

(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State.

(m) All business income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission.

"Railway operating revenue" from business done within this State shall mean "railway operating revenue" from business wholly within this State, plus the equal mileage proportion within this State of each item of "railway operating revenue" received from the interstate business of the company. "Equal mileage proportion" shall mean the proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue. "Interstate business" shall mean "railway operating revenue" from the interstate transportation of persons or property into, out of, or through this State. If the Secretary of Revenue shall find, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a corporation for purposes of this Part and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

(n) All business income of a telephone company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue. Provided, that where a telephone company is required to keep its records in accordance with the standard classification of accounts prescribed by the Federal Communications Commission the amounts in such accounts shall be used in computing the apportionment fraction as provided in this subsection.

(o) All business income of a motor carrier of property shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company hauling property for a charge or traveling on a scheduled route.

(p) All business income of a motor carrier of passengers shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company carrying passengers for a fare or traveling on a scheduled route.

(q) All business income of a telegraph company shall be apportioned by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

The property factor shall be as defined in subsection (j) of this section, the payroll factor shall be as defined in subsection (k) of this section, and the sales factor shall be as defined in subsection (*l*) of this section.

(r) All business income of an excluded corporation and of all other public utilities shall be apportioned by multiplying the income by the sales factor as determined under subsection (*l*) of this section.

(s) All business income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds.

(t)(1) If any corporation believes that the method of allocation or apportionment as administered by the Secretary has operated or will so operate as to subject it to taxation on a greater portion of its income than is reasonably attributable to business or earnings within the State, it may file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing on the petition. The time limitations set in G.S. 105-241.2 for the date of the hearing, notification to the taxpayer, and a decision following the hearing apply to a hearing held pursuant to this subsection. At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases, the Tax Review Board's membership shall be augmented by the addition of the Secretary, who shall sit as a member of the Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this subsection. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments and the decisions thereon shall be made by a majority vote of the augmented Board.

(2) If the corporation employs in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula prescribed by this section the income attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board may permit such separate accounting method in lieu of applying the applicable allocation formula if the Board finds that method best reflects the income and earnings attributable to this State.

(3) If the corporation shows that any other method of allocation than the applicable allocation formula prescribed by this section reflects more clearly the income attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the corporation believes will more nearly reflect its income from business within this State. If the Board concludes that the allocation formula prescribed by this section allocates to this State a greater portion of the net income of the corporation than is reasonably attributable to business or earnings within this State, it shall determine the allocable net income by such other method as it finds best calculated to assign to this State for taxation the portion of the corporation's net income reasonably attributable to its business or earnings within this State.

(4) There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's income earned in this State, and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning corporation is entitled thereto. No corpora-

tion shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a report or return of its income to this State except upon order in writing of the Board, and any return in which any alternative formula or other method, other than the applicable allocation formula prescribed by statute, is used without permission of the Board shall not be a lawful return.

When the Board determines, pursuant to the provisions of this subsection, that an alternative formula or other method more accurately reflects the income allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its net income for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Secretary may, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations, and activities.

(5) A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's future income to North Carolina than will be reasonably attributable to its proposed business or contemplated earnings within the State. Upon a proper showing in accordance with the procedure described above for determinations by the Board, the Board may authorize such corporation to allocate income from its future business to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years if the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operation presented by the corporation to the Board.

(6) When the Secretary asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved corporation may pay the tax and bring a civil action for recovery under the provisions of Article 9. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2; 1987 (Reg. Sess., 1988), c. 994, s. 1; 1993, c. 532, s. 12; 1995, c. 350, s. 3; 1996, 2nd Ex. Sess., c. 14, s. 5; 1998-98, s. 69; 1999-369, s. 5.4; 2000-126, s. 5.)

Effect of Amendments. —

Session Laws 2000-126, s. 5, effective July 14, 2000, rewrote subdivision (a)(7).

CASE NOTES

Reversion of Funds from Pension Fund. —

Plaintiff's reversion of pension plan contributions was not business income under the functional test of subsection (a)(1) of this section because plaintiff's contingent property right in the pension plan was not integral to its business nor used to generate income in its regular business operations. Union Carbide Corp. v. Offerman, 351 N.C. 310, 526 S.E.2d 167 (2000).

§ 105-130.5. Adjustments to federal taxable income in determining State net income.

(a) The following additions to federal taxable income shall be made in determining State net income:

(1) Taxes based on or measured by net income by whatever name called and excess profits taxes;
(2) Interest paid in connection with income exempt from taxation under this Part;
(3) The contributions deduction allowed by the Code;
(4) Interest income earned on bonds and other obligations of other states or their political subdivisions, less allowable amortization on any bond acquired on or after January 1, 1963;
(5) The amount by which gains have been offset by the capital loss carryover allowed under the Code. All gains recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition;
(6) The net operating loss deduction allowed by the Code; and
(7) Special deductions allowable under sections 241 to 247, inclusive, of the Code.
(8) Repealed by Session Laws 1987, c. 778, s. 2.
(9) Payments to or charges by a parent, subsidiary or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever pursuant to the Revenue Laws of this State.
(10) The total amounts allowed under this Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this Chapter the apportionment factor used by it in determining the amount of its apportioned income.
(11) The amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for mines, oil and gas wells, and other natural deposits exceeds the cost depletion allowance for these items under the Code, except as otherwise provided herein. This subdivision does not apply to depletion deductions for clay, gravel, phosphate rock, lime, shells, stone, sand, feldspar, gemstones, mica, talc, lithium compounds, tungsten, coal, peat, olivine, pyrophyllite, and other solid minerals or rare earths extracted from the soil or waters of this State. Corporations required to apportion income to North Carolina shall first add to federal taxable income the amount of all percentage depletion in excess of cost depletion that was subtracted from the corporation's gross income in computing its federal income taxes and shall then subtract from the taxable income apportioned to North Carolina the amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for solid minerals or rare earths extracted from the soil or waters of this State exceeds the cost depletion allowance for these items.
(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for a utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158.
(13) The amount of income the Code allowed the taxpayer to exclude because the income was attributed under section 925 of the Code to a foreign sales corporation, to the extent the Code required the amount to be included in the federal taxable income of the foreign sales corporation to which it was attributed.

(b) The following deductions from federal taxable income shall be made in determining State net income:

(1) Interest upon the obligations of the United States or its possessions, to the extent included in federal taxable income: Provided, interest upon the obligations of the United States shall not be an allowable deduction unless interest upon obligations of the State of North Carolina or any of its political subdivisions is exempt from income taxes imposed by the United States.

(1a) Interest upon the obligations of any of the following, net of related expenses, to the extent included in federal taxable income:

a. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.

b. A nonprofit educational institution organized or chartered under the laws of this State.

(2) Payments received from a parent, subsidiary or affiliated corporation in excess of fair compensation in intercompany transactions which in the determination of the net income or net loss of such corporation were not allowed as a deduction under the Revenue Laws of this State.

(3) The deductible portion of dividends from stock as provided under G.S. 105-130.7.

(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the 15 preceding years pursuant to the provisions of G.S. 105-130.8. A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8.

(5) Contributions or gifts made by any corporation within the income year to the extent provided under G.S. 105-130.9.

(6) Amortization in excess of depreciation allowed under the Code on the cost of any sewage or waste treatment plant, and facilities or equipment used for purposes of recycling or resource recovery of or from solid waste, or for purposes of reducing the volume of hazardous waste generated as provided in G.S. 105-130.10.

(7) Depreciation of emergency facilities acquired prior to January 1, 1955. Any corporation shall be permitted to depreciate any emergency facility, as such is defined in section 168 of the Code, over its useful life, provided such facility was acquired prior to January 1, 1955, and no amortization has been claimed on such facility for State income tax purposes.

(8) The amount of losses realized on the sale or other disposition of assets not allowed under section 1211(a) of the Code. All losses recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.

(9) With respect to a shareholder of a regulated investment company, the portion of undistributed capital gains of such regulated investment company included in such shareholder's federal taxable income and on which the federal tax paid by the regulated investment company is allowed as a credit or refund to the shareholder under section 852 of the Code.

(10) Repealed by Session Laws 1987, c. 778, s. 2.

(11) If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by

which the deduction was reduced and the amount of the deduction that was disallowed.

(12) Reasonable expenses, in excess of deductions allowed under the Code, paid for reforestation and cultivation of commercially grown trees; provided, that this deduction shall be allowed only to those corporations in which the real owners of all the shares of such corporation are natural persons actively engaged in the commercial growing of trees, or the spouse, siblings, or parents of such persons. Provided, further, that in no case shall a corporation be allowed a deduction for the same reforestation or cultivation expenditure more than once.

(13) The eligible income of an international banking facility to the extent included in determining federal taxable income, determined as follows:

a. "International banking facility" shall have the same meaning as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.

b. The eligible income of an international banking facility for the taxable year shall be an amount obtained by multiplying State taxable income as determined under G.S. 105-130.3 (determined without regard to eligible income of an international banking facility and allocation and apportionment, if applicable) for such year by a fraction, the denominator of which shall be the gross receipts for such year derived by the bank from all sources, and the numerator of which shall be the adjusted gross receipts for such year derived by the international banking facility from:

1. Making, arranging for, placing or servicing loans to foreign persons substantially all the proceeds of which are for use outside the United States;
2. Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or
3. Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.

c. The adjusted gross receipts shall be determined by multiplying the gross receipts of the international banking facility by a fraction the numerator of which is the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States and the denominator of which is the average amount for the taxable year of all assets of the international banking facility.

d. For the purposes of this subsection the term "foreign person" means:

1. An individual who is not a resident of the United States;
2. A foreign corporation, a foreign partnership or a foreign trust, as defined in section 7701 of the Code, other than a domestic branch thereof;
3. A foreign branch of a domestic corporation (including the taxpayer);
4. A foreign government or an international organization or an agency of either, or
5. An international banking facility.

For purposes of this paragraph, the terms "foreign" and "domestic" shall have the same meaning as set forth in section 7701 of the Code.

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax liability. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

(15) The amount paid during the income year, pursuant to 7 U.S.C. § 1445-2, as marketing assessments on tobacco grown by the corporation in North Carolina.

(16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158.

(17) The amount of 911 charges collected under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, and the amount of wireless Enhanced 911 service charges collected under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24.

(18) Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:

a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.

b. A court of this State approves and retains jurisdiction over the trust.

c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials.

(19) To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the Hurricane Floyd Reserve Fund in the Office of State Budget, Planning and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.

(c) The following other adjustments to federal taxable income shall be made in determining State net income:

(1) In determining State net income, no deduction shall be allowed for annual amortization of bond premiums applicable to any bond acquired prior to January 1, 1963. The amount of premium paid on any such bond shall be deductible only in the year of sale or other disposition.

(2) Federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property which has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes prior to the effective date of this Part.

(3) No deduction is allowed for any direct or indirect expenses related to income not taxed under this Part; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b).

(4) The taxpayer shall add to federal taxable income the amount of any recovery during the taxable year not included in federal taxable

income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Part but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from federal taxable income the amount of any recovery during the taxable year included in federal taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by this Part.

(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income.

(d) Repealed by Session Laws 1987, c. 778, s. 3.

(e) Notwithstanding any other provision of this section, any recapture of depreciation required under the Code must be included in a corporation's State net income to the extent required for federal income tax purposes.

(f) Expired. (1967, c. 1110, s. 3; 1969, cc. 1113, 1124; 1971, c. 820, s. 1; c. 1206, s. 1; 1973, c. 1287, s. 4; 1975, c. 764, s. 4; 1977, 2nd Sess., c. 1200, s. 1; 1979, c. 179, s. 2; c. 801, s. 32; 1981, c. 704, s. 20; c. 855, s. 1; 1983, c. 61; c. 713, ss. 70-73, 82, 83; 1985, c. 720, s. 1; c. 791, s. 43; 1985 (Reg. Sess., 1986), c. 825; 1987, c. 89; c. 637, s. 1; c. 778, ss. 2, 3; c. 804, s. 3; 1991, c. 598, ss. 3, 10; 1991 (Reg. Sess., 1992), c. 857, s. 1; 1993 (Reg. Sess., 1994), c. 745, ss. 4, 5; 1995, c. 509, s. 50; 1996, 2nd Ex. Sess., c. 14, ss. 4, 10; 1997-439, s. 1; 1998-98, ss. 1(c), 4, 69; 1998-158, s. 5; 1998-171, s. 7; 1999-333, s. 2; 1999-337, s. 1; 1999-463, Ex. Sess., s. 4.6(b); 2000-140, s. 93.1(a); 2000-173, s. 19(c).)

Editor's Note. —

Session Laws 1999-463, enacted at the 1999 Extra Session held on December 15 and 16, 1999, provides in s. 1 that the act shall be known as the Hurricane Floyd Recovery Act of 1999.

For counties declared a major disaster area as a result of Hurricane Floyd, see the preface to the 2000 Special Supplement or the note under § 115C-84.2.

Session Laws 1999-463, s. 4.5 provides that a written statement of State and federal income tax treatment be included with the disbursement of funds or property for hurricane relief or assistance by each agency disbursing same.

Effect of Amendments. —

The 1999 Extra Session amendment, by Session Laws 1999-463, s. 4.6 (b), effective for taxable years beginning on or after January 1, 1999, added subdivision (b)(19).

Session Laws 2000-140, s. 93.1, effective July 1, 2000, in subdivision (b)(19), substituted "Office of State Budget, Planning and Management" for "Office of State Budget and Management."

Session Laws 2000-173, s. 19(c), effective August 2, 2000, inserted "911 charges collected under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, and the amount of" in subdivision (b)(17).

§ 105-130.15. Basis of return of net income.

(a) The net income of a corporation shall be computed in accordance with the method of accounting it regularly employs in keeping its books. The method must be consistent with respect to both income and deductions. If this method does not clearly reflect the income, the computation shall be made in accordance with a method that, in the Secretary's opinion, does clearly reflect the income, but shall follow as nearly as practicable the federal practice, unless contrary to the context and intent of this Part.

The Secretary may adopt the rules and regulations and any guidelines administered or established by the Internal Revenue Service unless contrary to any provisions of this Part.

(b) Change of Income Year. —

(1) A corporation may change the income year upon which it reports for income tax purposes without prior approval by the Secretary of Revenue if such change in income year has been approved by or is acceptable to the Federal Commissioner of Internal Revenue and is used for filing income tax returns under the provisions of the Code.

If a corporation desires to make a change in its income year other than as provided above, it may make such change in its income year with the approval of the Secretary of Revenue, provided such approval is requested at least 30 days prior to the end of its new income year.

A corporation which has changed its income year without requesting the approval of the Secretary of Revenue as provided in the first paragraph of this subdivision shall submit to the Secretary of Revenue notification of any change in the income year after the change has been approved by the Federal Commissioner of Internal Revenue or his agent where application for permission to change is required by the Federal Commissioner of Internal Revenue with such notification stating that such approval has been received. Where application for change of the income year is not required by the Federal Commissioner of Internal Revenue, notification of the change of income year shall be submitted to the Secretary of Revenue with the short period return.

(2) A return for a period of less than 12 months (referred to in this subsection as "short period") shall be made when the corporation changes its income year. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year, except that a corporation changing to, or from, a taxable year varying from 52 to 53 weeks shall not be required to file a short period return if such change results in a short period of 359 days or more, or less than seven days. Short period income tax returns shall be filed within the same period following the end of such short period as is required for full year returns under the provisions of G.S. 105-130.17.

(c) Any foreign corporation not domesticated in this State shall not use the installment method of reporting income to this State unless such corporation files a bond with the Secretary of Revenue in such amount and with such sureties as the Secretary shall deem necessary to secure the payment of any taxes which were deferred with respect to any installment transaction.

(d) Notwithstanding any other provision of this Part, any corporation which uses the installment method of reporting income to this State and which is planning to withdraw from this State, merge, or consolidate its business, or terminate its business in this State by any other means whatsoever, shall be required to make a report for income tax purposes, to the Secretary of Revenue, of any unrealized or unreported income from installment sales made while doing business in this State and to pay any tax which may be due on such income. The manner and form for making such report and paying the tax shall be as prescribed by the Secretary. (1939, c. 158, s. 318; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1949, c. 392, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1983, c. 713, s. 82; 1998-98, s. 69; 2000-140, s. 64(a).)

Effect of Amendments. —

Session Laws 2000-140, s. 64(a), effective July 21, 2000, in subsection (a), in the first paragraph, substituted "employs in keeping its books. The method must" for "employed in keeping the books of such corporation, but such method of accounting must," substituted "deductions. If this method" for "deductions, but if in any case such method," substituted "a method that, in the Secretary's opinion" for "such method as in the opinion of the Secretary of Revenue" and deleted "in his discretion" following "The Secretary may" in the second paragraph.

§ 105-130.17. Time and place of filing returns.

(a) Returns must be filed as prescribed by the Secretary at the place prescribed by the Secretary. Returns must be in the form prescribed by the Secretary. The Secretary shall furnish forms in accordance with G.S. 105-254.

(b) Except as otherwise provided in this section, the return of a corporation shall be filed on or before the fifteenth day of the third month following the close of its income year. An income year ending on any day other than the last day of the month shall be deemed to end on the last day of the calendar month ending nearest to the last day of a taxpayer's actual income year.

(c) In the case of mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158, which are required to file under subsection (a)(9) of G.S. 105-130.11, a return made on the basis of a calendar year shall be filed on or before the fifteenth day of the September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the fifteenth day of the ninth month following the close of the fiscal year.

(d) A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263.

(d1) Organizations described in G.S. 105-130.11(a)(1), (3), (4), (5), (6), (7) and (8) that are required to file a return under G.S. 105-130.11(b) shall file a return made on the basis of a calendar year on or before the fifteenth day of May following the close of the calendar year and a return made on the basis of a fiscal year on or before the fifteenth day of the fifth month following the close of the fiscal year.

(e) Any corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a merger, conversion, or consolidation or for any other reason whatsoever shall file its return for the then current income year within 75 days after the date it terminates its business in this State.

(f) Repealed by Session Laws 1998-217, s. 42, effective October 31, 1998. (1939, c. 158, s. 329; 1943, c. 400, s. 4; 1951, c. 643, s. 4; 1953, c. 1302, s. 4; 1955, c. 17, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981, c. 56; 1989 (Reg. Sess., 1990), c. 984, s. 8; 1997-300, s. 3; 1998-217, s. 42; 1999-369, s. 5.5; 2000-140, s. 64(b).)

Effect of Amendments. —
Session Laws 2000-140, s. 64(b), effective July 21, 2000, rewrote subsection (a).

§ 105-130.18. Failure to file returns; supplementary returns.

If the Secretary determines that a corporation has failed to file a return or to include in a return filed, either intentionally or through error, items of taxable income, the Secretary may require from the corporation a return or supplementary return, under affirmation, of all the items of income that the corporation received during the year for which the return is made, whether or not taxable under this Part. If from a supplementary return or otherwise the Secretary finds that any items of income, taxable under this Part, have been omitted from the original return, that any items returned as taxable are not taxable, or that any item of taxable income is overstated or understated, the Secretary may require that the item be disclosed under affirmation of the corporation, and be added to or deducted from the original return. The filing of a supplementary return and the correction of the original return does not relieve the corporation from any of the penalties under G.S. 105-236. The Secretary may proceed under the provisions of G.S. 105-241.1, whether or not the Secretary requires a return or a supplementary return under this section. (1939, c. 158, s. 331; 1959, c. 1259, s. 8; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1998-98, s. 69; 2000-140, s. 64(c).)

Effect of Amendments. —
Session Laws 2000-140, s. 64(c), effective July 21, 2000, rewrote the section.

§ 105-130.28. (Repealed effective for costs incurred during taxable years beginning on or after January 1, 2006) Credit against corporate income tax for construction of a renewable energy equipment facility.

(a) Credit. — A corporation that constructs in North Carolina a facility for the manufacture of renewable energy equipment is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the installation and equipment costs of construction paid during the taxable year. The entire credit may not be taken for the taxable year in which the costs are paid but must be taken in five equal installments beginning with the taxable year in which the costs are paid.

No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction.

(b) Definitions. — The following definitions apply in this section:

(1) Biomass equipment. — Products designed to use renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

(2) Hydroelectric generator. — Defined in G.S. 105-129.15.

(3) Renewable biomass resources. — Defined in G.S. 105-129.15.

(4) Renewable energy equipment. — Biomass equipment, hydroelectric generators, solar electric or thermal equipment, and wind energy equipment.

(5) Solar electric or thermal equipment. — Products designed to convert sunlight into electricity or heat.

(6) Wind energy equipment. — Products designed to capture and convert wind energy into electricity or mechanical power.

(c) Cap. — The credit allowed by this section may not exceed fifty percent (50%) of the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit, including carryforwards, claimed by the taxpayer under this section for the taxable year. Any unused portion of the credit may be carried forward for the succeeding 10 years.

(d) No Double Credit. — A taxpayer that claims any other credit allowed under this Chapter with respect to construction of a facility for the manufac-

§ 105-130.28 has a delayed repeal date. See notes.

ture of renewable energy equipment may not take the credit allowed in this section with respect to the same facility. (1981, c. 921, s. 1; 1993 (Reg. Sess., 1994), c. 584, s. 2; 1998-98, s. 82; 2000-128, s. 1.)

Section Repealed Effective for costs incurred during taxable years beginning on or after January 1, 2006. — This section is repealed effective for costs incurred during taxable years beginning on or after January 1, 2006, by Session Laws 2000-128, s. 3.

Editor's Note. —

Session Laws 2000-128, s. 4, effective July 14, 2000, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under the statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal."

Effect of Amendments. —

Session Laws 2000-128, s. 1, effective for taxable years beginning on or after January 1, 2000, substituted "renewable energy" for "photovoltaic" in the section heading; divided subsection (a) into the present two paragraphs, and in the first paragraph, inserted "Credit," substituted "A corporation" for "Any corporation," substituted "manufacture of renewable energy" for "production of photovoltaic" and added the last sentence, and deleted the last sentence in the second paragraph stating "The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer"; substituted the present provisions in subsection (b) for "As used in this section, 'photovoltaic equipment' means those products designed, manufactured, and produced to convert sunlight directly into electricity"; substituted the present provisions in subsection (c) for "The amount of credit allowed under this section may be carried over for the next succeeding five years"; and added subsection (d).

Part 2. Individual Income Tax.

§ 105-134.6. Adjustments to taxable income.

(a) S Corporations. — The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be subject to the adjustments provided in subsections (b), (c), and (d) of this section.

(b) Deductions. — The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

(1) Interest upon the obligations of any of the following:
  a. The United States or its possessions.
  b. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.
  c. A nonprofit educational institution organized or chartered under the laws of this State.

(2) Gain from the disposition of obligations issued before July 1, 1995, to the extent the gain is exempt from tax under the laws of this State.

(3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.

(4) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1002, s. 2.

(5) Refunds of state, local, and foreign income taxes included in the taxpayer's gross income.

(5a) Reserved.

(5b) The amount received during the taxable year from one or more State, local, or federal government retirement plans to the extent the amount is exempt from tax under this Part pursuant to a court order in settlement of the following cases: Bailey v. State, 92 CVS 10221, 94 CVS 6904, 95 CVS 6625, 95 CVS 8230; Emory v. State, 98 CVS 0738; and Patton v. State, 95 CVS 04346. Amounts deducted under this subdivision may not also be deducted under subdivision (6) of this subsection.

(6)a. An amount, not to exceed four thousand dollars ($4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.

b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.

c. The amount calculated in this subparagraph is the amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars ($2,000) in any taxable year.

d. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts provided in this subdivision for various types of retirement benefits apply separately to each spouse's benefits.

(7) Recodified as G.S. 105-134.6(d)(1).

(8) Recodified as G.S. 105-134.6(d)(2).

(9) Income that is (i) earned or received by an enrolled member of a federally recognized Indian tribe and (ii) derived from activities on a federally recognized Indian reservation while the member resides on the reservation. Income from intangibles having a situs on the reservation and retirement income associated with activities on the reservation are considered income derived from activities on the reservation.

(10) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property.

(11) Severance wages received by a taxpayer from an employer as the result of the taxpayer's permanent, involuntary termination from employment through no fault of the employee. The amount of severance wages deducted as the result of the same termination may not exceed thirty-five thousand dollars ($35,000) for all taxable years in which the wages are received.

(12) Repealed by Session Laws 1998-171, s. 2, effective October 1, 1998.

(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority unless the distribution is a refund of earnings described in section 529 of the Code.

(14) The amount paid to the taxpayer by the State under G.S. 148-84 as compensation for pecuniary loss suffered by reason of erroneous conviction and imprisonment.

(15) Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:

a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.

b. A court of this State approves and retains jurisdiction over the trust.

c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials.

(16) The amount paid to the taxpayer during the taxable year from the Hurricane Floyd Reserve Fund in the Office of State Budget, Planning, and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.

(c) Additions. — The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

(1) Interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.

(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code.

(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4)(A) of the Code.

(4a) The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by five hundred dollars ($500.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	**AGI**
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(5) The market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14.

(6) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.

(7) The amount of federal estate tax that is attributable to an item of income in respect of a decedent and is deducted from gross income under section 691(c) of the Code.

(d) Other Adjustments. — The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

(1) The amount of inheritance or estate tax attributable to an item of income in respect of a decedent required to be included in gross

income under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, may be deducted in the year the item of income is included. The amount of inheritance or estate tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance or estate tax paid under Article 1 or 1A of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of the tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance or estate tax return that the beneficiary needs to compute the deduction allowed by this subdivision.

(2) The taxpayer may deduct the amount by which the taxpayer's deductions allowed under the Code were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this Part for the amount.

(3) The taxpayer shall add to taxable income the amount of any recovery during the taxable year not included in taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Part but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from taxable income the amount of any recovery during the taxable year included in taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by this Part. (1989, c. 718, s. 2; c. 728, s. 1.4; c. 770, ss. 41.2, 41.3; c. 792, s. 1.1; 1989 (Reg. Sess., 1990), c. 984, s. 4; c. 1002, s. 2; 1991, c. 45, s. 9; c. 453, s. 1; c. 689, ss. 253, 254; 1991 (Reg. Sess., 1992), c. 1007, s. 3; 1993, c. 12, s. 8; c. 443, s. 8; c. 485, s. 9; 1993 (Reg. Sess., 1994), c. 745, s. 7; 1995, c. 17, s. 5; c. 42, ss. 1, 2(a), (b); c. 46, s. 3; c. 370, s. 3; 1996, 2nd Ex. Sess., c. 13, s. 8.1; c. 14, s. 9; 1997-226, s. 3; 1997-328, s. 1; 1997-388, s. 4; 1997-525, s. 1; 1998-98, s. 69; 1998-171, ss. 2, 3; 1998-212, ss. 29A.2(c), 29A.13(a); 1999-333, s. 3; 1999-463, Ex Sess., s. 4.6 (a); 2000-140, ss. 65, 93.1(a).)

Editor's Note. —
Session Laws 1999-463, enacted at the 1999 Extra Session held on December 15 and 16, 1999, provides in s. 1 that the act shall be known as the Hurricane Floyd Recovery Act of 1999.

For counties declared a major disaster area as a result of Hurricane Floyd, see the preface to the 2000 Special Supplement or the note under § 115C-84.2.

Session Laws 1999-463, s. 4.5 provides that a written statement of State and federal income tax treatment be included with the disbursement of funds or property for hurricane relief or assistance by each agency disbursing same.

Effect of Amendments. —

The 1999 Extra Session amendment, by Session Laws 1999-463, s. 4.6 (a), effective for taxable years beginning on or after January 1, 1999, added subdivision (b)(16).

Session Laws 2000-140, s. 65, effective July 21, 2000, added subdivision (b)(5b).

Session Laws 2000-140, s. 93.1, effective July 1, 2000, in subdivision (b)(16), substituted "Office of State Budget, Planning and Management" for "Office of State Budget and Management."

§ 105-159.1. Designation of tax by individual to political party.

OPINIONS OF ATTORNEY GENERAL

Regarding the designation of funds for political parties by 1998 taxpayers where a third party was erroneously included on the income tax forms, see opinion of Attorney General to Gary O. Bartlett, Executive Secretary-Director, State Board of Elections, N.C. General Assembly, 1999 N.C.A.G. 16 (6/14/99).

Part 5. Tax Credits for Qualified Business Investments.

§ 105-163.010. (Repealed effective for investments made on or after January 1, 2003) Definitions.

OPINIONS OF ATTORNEY GENERAL

On the subject of whether North Carolina Enterprise Corporations are entitled to a tax credit pursuant to this section, see the Attorney General Opinion dated 17 December 1996 and advisory letter dated 28 October 1996, attached to and incorporated by reference in the opinion of Attorney General to The Honorable David W. Hoyle Senator, 1998 N.C.A.G. 44 (10/22/98).

Article 4A.

Withholding; Estimated Income Tax for Individuals.

§ 105-163.1. Definitions.

The following definitions apply in this Article:

(1) Compensation. — Consideration a payer pays a nonresident individual or nonresident entity for personal services performed in this State.

(2) Contractor. — Either of the following:

a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.

b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.

(3) Dependent. — An individual with respect to whom an income tax exemption is allowed under the Code.

(4) Employee. — An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services

outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.

(5) Employer. — A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
  a. Controls the payment of wages to an individual for services performed for another.
  b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
  c. Pays wages on behalf of a unit of government that is not located in this State.
  d. Pays wages for any other reason.

(6) Individual. — Defined in G.S. 105-134.1.

(7) Miscellaneous payroll period. — A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(8) Nonresident entity. — Any of the following:
  a. A foreign limited liability company, as defined in G.S. 57C-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.
  b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.
  c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.

(9) Pass-through entity. — Defined in G.S. 105-163.010.

(10) Payer. — A person who, in the course of a trade or business, pays a nonresident individual or a nonresident entity compensation for personal services performed in this State.

(11) Payroll period. — A period for which an employer ordinarily pays wages to an employee of the employer.

(11a) Pension payer. — A payor or a plan administrator with respect to a pension payment under section 3405 of the Code.

(11b) Pension payment. — A periodic payment or a nonperiodic distribution as those terms are defined in section 3405 of the Code.

(12) Taxable year. — Defined in section 441(b) of the Code.

(13) Wages. — The term has the same meaning as in section 3401 of the Code except it does not include either of the following:
  a. The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11).
  b. The amount an employer pays an employee as reimbursement for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer.

(14) Withholding agent. — An employer, a pension payer, or a payer. (1959, c. 1259, s. 1; 1967, c. 716, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 5; 1979, c. 801, s. 70; 1983, c. 713, ss. 79, 82; 1985, c. 394, s. 1; c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 5; 1989, c. 36, s. 5; c. 728, s. 1.40; 1989 (Reg. Sess., 1990), c. 945, s. 5; c. 981, s. 6; 1991, c. 689, s. 255; 1991 (Reg.

Sess., 1992), c. 922, s. 7; 1993, c. 12, s. 9; c. 354, s. 15; 1997-6, s. 6; 1997-109, ss. 1, 2, 4; 1998-162, ss. 1, 2; 1999-414, ss. 1, 2; 2000-126, s. 2.)

Effect of Amendments. —
Session Laws 2000-126, s. 2, effective January 1, 2001, in subdivision (11b) deleted "that is not an eligible rollover distribution" following "nonperiodic distribution" and inserted "those terms are" preceding "defined."

§ 105-163.2A. Pension payers must withhold taxes.

(a) Definitions. — The definitions provided in section 3405 of the Code apply in this section.

(b) Withholding Required. — A pension payer required to withhold federal taxes under section 3405 of the Code on a pension payment to a resident of this State must deduct and withhold from the payment the State income taxes payable on the payment. Liability for withholding and paying taxes under this section on a pension payment falls on the person who would be liable under section 3405 of the Code for withholding federal taxes on the payment.

Except as otherwise provided in this section, the provisions of this Article apply to a pension payer's pension payment to a resident of this State as if it were an employer's payment of wages to an employee. If a pension payer has more than one arrangement under which it may make pension payments to a resident of this State, each arrangement must be treated separately under this section.

(c) Amount. — In the case of a periodic payment, the pension payer must withhold the amount that would be required to be withheld under this Article if the payment were a payment of wages by an employer to an employee for the appropriate payroll period. If the recipient of periodic payments fails to file an exemption certificate under G.S. 105-163.5, the pension payer must compute the amount to be withheld as if the recipient were a married individual claiming three withholding exemptions.

In the case of a nonperiodic distribution, the pension payer must withhold taxes equal to four percent (4%) of the nonperiodic distribution.

(d) Election of No Withholding. — The recipient may elect not to have taxes withheld under this section to the extent permitted by section 3405 of the Code. The election must be in the form required by the Secretary. In the case of periodic payments, the election remains in effect until revoked by the recipient. In the case of a nonperiodic distribution, the election applies on a distribution-by-distribution basis unless it meets conditions prescribed by the Secretary for it to apply to subsequent nonperiodic distributions by the pension payer.

A pension payer must notify each recipient of the right to elect not to have taxes withheld under this section. The notice must comply with the requirements of section 3405 of the Code and any additional requirements prescribed by the Secretary.

A recipient's election not to have taxes withheld under this section is void if the recipient fails to furnish the recipient's tax identification number to the pension payer, or the Secretary has notified the pension payer that the tax identification number furnished by the recipient is incorrect.

(e) Exemptions. — This section does not apply to the following pension payments:

(1) A pension payment that is wages under this Article.

(2) Any portion of a pension payment that meets both of the following conditions:

a. It is not a distribution or payment from an individual retirement plan as defined in section 7701 of the Code.

b. The pension payer reasonably believes it is not taxable to the recipient under Article 4 of this Chapter.

(3) A distribution described in section 404(k)(2) of the Code, relating to dividends on corporate securities.

(4) A pension payment that consists only of securities of the recipient's employer corporation plus cash not in excess of two hundred dollars ($200.00) in lieu of securities of the employer corporation. (1999-414, s. 3; 2000-126, s. 3.)

Effect of Amendments. — Session Laws 2000-126, s. 3, effective January 1, 2001, inserted "to the extent permitted by section 3405 of the Code" in the first sentence in subsection (d).

§ 105-163.15. Failure by individual to pay estimated income tax; penalty.

(a) In the case of any underpayment of the estimated tax by an individual, the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment.

(b) For purposes of subsection (a), the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier: (i) the fifteenth day of the fourth month following the close of the taxable year, or (ii) with respect to any portion of the underpayment, the date on which such portion is paid. A payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) For purposes of this section there shall be four required installments for each taxable year with the time for payment of the installments as follows:

(1) First installment — April 15 of taxable year;
(2) Second installment — June 15 of taxable year;
(3) Third installment — September 15 of taxable year; and
(4) Fourth installment — January 15 of following taxable year.

(d) Except as provided in subsection (e), the amount of any required installment shall be twenty-five percent (25%) of the required annual payment. The term "required annual payment" means the lesser of:

(1) Ninety percent (90%) of the tax shown on the return for the taxable year, or, if no return is filed, ninety percent (90%) of the tax for that year; or

(2) One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

(e) In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under subsection (d), the amount of the required installment shall be the annualized income installment, and any reduction in a required installment resulting from the application of this subsection shall be recaptured by increasing the amount of the next required installment determined under subsection (d) by the amount of the reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured.

In the case of any required installment, the annualized income installment is the excess, if any, of (i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for months in the taxable year ending before the due date for the installment, over (ii) the aggregate amount of any prior required installments for the taxable year. The taxable income shall be placed on an annualized basis under rules prescribed by the Secretary. The applicable percentages for the required installments are as follows:

(1) First installment — twenty-two and one-half percent (22.5%);
(2) Second installment — forty-five percent (45%);
(3) Third installment — sixty-seven and one-half percent (67.5%); and
(4) Fourth installment — ninety percent (90%).

(f) No addition to the tax shall be imposed under subsection (a) if the tax shown on the return for the taxable year reduced by the tax withheld under this Article is less than the amount set in section 6654(e) of the Code or if the individual did not have any liability for tax under Part 2 of Article 4 for the preceding taxable year.

(g) For purposes of this section, the term "tax" means the tax imposed by Part 2 of Article 4 minus the credits against the tax allowed by this Chapter other than the credit allowed by this Article. The amount of the credit allowed under this Article for withheld income tax for the taxable year is considered a payment of estimated tax, and an equal part of that amount is considered to have been paid on each due date of the taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld are considered payments of estimated tax on the dates on which the amounts were actually withheld.

(h) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the fourth required installment for the taxable year.

(i) Notwithstanding subsections (c), (d), (e), and (h) of this section, an individual who is a farmer or fisherman for a taxable year is subject to the provisions of this subsection.

(1) One installment. — The individual is required to make only one installment payment of tax for that taxable year. This installment is due on or before January 15 of the following taxable year. The amount of the installment payment must be the lesser of:
   a. Sixty-six and two-thirds percent (66 ⅔%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66 ⅔%) of the tax for that year; or
   b. One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.
(2) Exception. — If, on or before March 1 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no addition to tax is imposed under subsection (a) of this section with respect to any underpayment of the required installment for the taxable year.
(3) Eligibility. — An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent (66 ⅔%) of the total gross income from all sources for the taxable year, or the individual's gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 ⅔%) of the total gross income from all sources shown on the return.

(j) In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months that correspond thereto. This section shall be applied to taxable years of less than 12 months in accordance with rules prescribed by the Secretary.

(k) This section shall not apply to any estate or trust. (1959, c. 1259, s. 1; 1963, c. 785, ss. 3, 4; 1973, c. 476, s. 193; c. 1287, s. 7; 1977, c. 657, s. 5; c. 1114, s. 8; 1985, c. 443, s. 2; 1989, c. 692, s. 7.1; 1991 (Reg. Sess., 1992), c. 950, s. 1; 1997-109, s. 2; 1998-98, s. 71; 1998-212, s. 29A.14(h); 2000-126, s. 4.)

Effect of Amendments. —
Session Laws 2000-126, s. 4, effective July 14, 2000, rewrote subsection (i).

Article 4C.

Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

§ 105-163.44: Repealed by Session Laws 2000-140, s. 66, effective July 21, 2000.

Article 5.

Sales and Use Tax.

Part 1. Title, Purpose and Definitions.

§ 105-164.3. Definitions.

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

(1) "Business" shall include any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Article to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

(2) Reserved.

(3) "Consumer" shall mean and include every person storing, using or otherwise consuming in this State tangible personal property purchased or received from a retailer either within or without this State.

(4) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever.

(5) "Engaged in business" means maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally

domesticated or qualified to do business in this State is immaterial. It also means maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental. It also means making a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met.

(6) "Gross sales" means the sum total of all retail sales of tangible personal property as defined herein, whether for cash or credit without allowance for cash discount and without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or any other expenses whatsoever and without any deductions of any kind or character except as provided in this Article.

(6a) Reserved.

(6b) Hub. — Either of the following:

a. An interstate air courier's hub is the airport in this State that meets all of the following conditions:
   1. The air courier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.
   2. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.
   3. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution.

b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:
   1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.
   2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport.

(6c) "In this (the) State" means within the exterior limits of the State of North Carolina and includes all territory within such limits owned by or ceded to the United States of America.

(6d) Interstate air courier. — A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6e) Interstate passenger air carrier. — A person whose primary business is scheduled passenger air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce.

(7) Recodified as (6c).

(7a) "Lease or rental" means a transfer, for consideration, of the use but not the ownership of property to another for a period of time.

(7b) "Mail order sale" means a sale of tangible personal property, ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and transports the property or causes it to be transported to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.

(8) Major recycling facility. — Defined in G.S. 105-129.25.

(8a) "Manufactured home" means a structure that is designed to be used as a dwelling and that meets one of the following conditions:

a. Is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development.
b. Is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, is built on a permanent chassis, and is transportable in one or more sections.
c, d. Repealed by Session Laws 2000, ch. 173, s. 9, effective August 2, 2000.

(8b) Moped. — A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

(8c) "Motor vehicle" means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:
a. A moped.
b. Special mobile equipment.
c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
d. A farm tractor or other implement of husbandry.
e. A manufactured home, a mobile office, or a mobile classroom.
f. Road construction or road maintenance machinery or equipment.

(9) "Net taxable sales" shall mean and include the gross retail sales of the business of the retailer taxed under this Article after deducting exempt sales and nontaxable sales.

(10) "Nonresident retail or wholesale merchant" means a person who does not have a place of business in this State, is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State.

(11) "Person" has the same meaning as in G.S. 105-228.90.

(11a) Prepared food and drink. — Meals, food, and beverages to which a retailer has added value or whose state the retailer has altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make them available for immediate human consumption.

(11b) "Prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: Federal law prohibits dispensing without prescription".

(11c) "Production company" means a person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.

(12) "Purchase" means acquired for a consideration whether
a. The acquisition was effected by a transfer of title or possession, or both, or a license to use or consume;
b. The transfer was absolute or conditional regardless of the means by which it was effected; and
c. The consideration is a price or rental in money or by way of exchange or barter.

It shall also include the procuring of a retailer to erect, install or apply tangible personal property for use in this State.

(13) "Retail" shall mean the sale of any tangible personal property in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

(14) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. "Retailer" also means a person who makes a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met. Provided, however, that when in the opinion of the Secretary it is necessary for the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as "retailers" for the purpose of this Article.

(15) Sale or selling. — The transfer of title or possession of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, for a consideration paid or to be paid.

The term includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work. The term also includes the furnishing or preparing for a consideration of any tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared. The term also includes a transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purposes of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property.

(16) Except as provided in paragraph f., "sales price" means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property and that are a part of the sale valued in money whether paid in money or otherwise and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Provided, however, that where a manufacturer, producer or contractor erects, installs or affixes tangible personal property upon real property pursuant to a

construction or performance-type contract with or for the benefit of the owner of such real property, the sales price shall be the cost of such property to the manufacturer, producer or contractor performing the contract. Provided, further:

a. The cost for labor or services rendered in erecting, installing or applying property sold when separately charged shall not be included as a part of the "sales price";

b. Finance charges, service charges or interest from credit extended under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price shall not be considered a part of the "sales price" when separately charged;

c. "Sales price" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer except that any manufacturers' or importers' excise tax shall be included in the term.

d. "Sales price" shall not include any amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees, whether or not said deposits are separately charged.

e. "Sales price" shall not include amounts charged as deposits on aeronautic, automotive, industrial, marine and farm replacement parts which are returnable to vendors for rebuilding or remanufacturing and which amounts are refundable or creditable to vendees, whether or not such deposits are separately charged. This subsection shall not be construed to include tires and batteries.

f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine.

(16a) "Secretary" means the Secretary of the North Carolina Department of Revenue.

(16b) Special mobile equipment. — Any of the following:

a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus is driven on the highway only to get to and from a nonhighway job and is not designed or used primarily for the transportation of persons or property.

b. A vehicle that has permanently attached special equipment and is used only for parade purposes.

c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.

(16c) "State agency" means a unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education.

(17) "Storage" means and includes any keeping or retention in this State for any purpose by the purchaser thereof, except sale in the regular course of business, of tangible personal property purchased from a retailer.

(18) "Use" means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser

thereof and includes, but is not limited to, any withdrawal from storage, installation, affixation to real or personal property, exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but shall not include the sale of tangible personal property in the regular course of business.

(19) "Storage" and "Use"; Exclusion. — "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser thereof solely outside the State.

(20) Tangible personal property. — Personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term does not include stocks, bonds, notes, insurance, or other obligations or securities, nor does it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes computer software delivered on a storage medium, such as a cd rom, a disk, or a tape.

(21) "Taxpayer" means any person liable for taxes under this Article.

(22) "Use tax" means the tax imposed by Part 2 of this Article.

(23) "Wholesale merchant" shall mean every person who engages in the business of buying or manufacturing any tangible personal property and selling same to registered retailers, wholesalers and nonresident retail or wholesale merchants for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, or any other place or places, separate and apart from the place of manufacture or production, for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."

(24) "Wholesale sale" shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale.

(25) "Utility" means either of the following:

a. A business entity that provides local, toll, or private telecommunications service as defined by G.S. 105-120(e).

b. A business entity or a municipality that sells electric power. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104; c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27; c. 557, s. 3.1; c. 854, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1044, s. 3; c. 1096, ss. 1-3; 1989, c. 692, s. 3.2; 1989 (Reg. Sess., 1990), c. 813, s. 13; 1991, c. 45, s. 15; c. 79, ss. 1, 3; c. 689, s. 190.1(a); 1991 (Reg. Sess., 1992), c. 949, s. 3; 1993, c. 354, s. 16; c. 484, s. 1; c. 507, s. 1; 1995 (Reg. Sess., 1996), c. 649, s. 2; 1996, 2nd Ex. Sess., c. 14, ss. 13, 14; 1997-6, s. 7; 1997-370, s. 1; 1997-426, s. 4; 1998-22, s. 4; 1998-55, ss. 7, 13; 1998-98, ss. 13.1(a), 106; 1999-337, s. 28(a), (b); 1999-360, s. 6(a)-(c); 1999-438, s. 4; 2000-153, s. 4; 2000-173, s. 9.)

Effect of Amendments. —
Session Laws 2000-153, s. 4, effective August 2, 2000, added subdivision (11c).
Session Laws 2000-173, s. 9, effective August 2, 2000, in subdivision (8a), inserted "that meets one of the following conditions" in the introductory language; substituted present subdivision (8a)a. for "Is built on a permanent chassis"; substituted present subdivision (8a)b. for "Is transportable in one or more sections"; repealed subdivision (8a)c. which read, "When transported, is at least eight feet wide or forty feet long; and"; and repealed subdivision (8a)d. which read, "When erected on a site, has at least 320 square feet."

Part 2. Taxes Levied.

§ 105-164.4. Tax imposed on retailers.

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars ($300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

(1c) The rate of one percent (1%) applies to the sales price of the following articles:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuel, other than electricity, to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed by this subdivision.

d. Sales of fuel, other than electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.

e. Sales of fuel, other than electricity, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

(1d) The rate of one percent (1%) applies to the sales price of the articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars ($80.00) per article.

a. to k. Recodified as § 105-164.4A by Session Laws 1999-360, s. 3(a), effective August 4, 1999.

(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.

(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity described in this subdivision and measured by a separate meter or another separate device:

a. Sales of electricity to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

b. Sales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity to be used for residential heating purposes. The quantity of electricity purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

c. Sales of electricity to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

(2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.

(3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term "persons who rent to transients" means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including "real estate brokers" as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin, token, or card-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of electricity or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity subject to tax under another subdivision in this section. Gross receipts from sales of local telecommunications service do not include receipts from service provided by means of public coin-operated pay telephone instruments and paid for by coin. A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a specialty market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the specialty market. The term "specialty market" has the same meaning as defined in G.S. 66-250.

(4c) The rate of six and one-half percent (6 ½%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

(5) Repealed by Session Laws 1998-212, s. 29A.1(a), effective May 1, 1999.

(b) The tax levied in this section shall be collected from the retailer and paid by him at the time and in the manner as hereinafter provided. Provided, however, that any person engaging or continuing in business as a retailer shall pay the tax required on the net taxable sales of such business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of tangible personal property in such form as may be accurately and conveniently checked by the Secretary or his duly authorized agent. If such records are not kept separately the tax shall be paid as a retailer on the gross sales of business and the exemptions and exclusions provided by this Article shall not be allowed. The tax levied in this section is in addition to all other taxes whether levied in the form of excise, license or privilege or other taxes.

(c) Certificate of Registration. — Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1963, c. 1169, ss. 3, 11; 1967, c. 1110, s. 6; c. 1116; 1969, c. 1075, s. 5; 1971, c. 887, s. 1; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 752; 1977, c. 903; 1977, 2nd Sess., c. 1218; 1979, c. 17, s. 1; c. 22; c. 48, s. 1; c. 527, s. 1; c. 801, s. 73; 1981, c. 984, ss. 1, 2; 1981 (Reg. Sess., 1982), cc. 1207, 1273; 1983, c. 510; c. 713, ss. 89, 93; c. 805, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1065, ss. 1, 2, 4; c. 1097, ss. 6, 13; 1985, c. 704; 1985 (Reg. Sess., 1986), c. 925; c. 1005; 1987, c. 557, ss. 4, 5; c. 800, ss. 2, 3; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 1044, s. 4; 1989, c. 692, ss. 3.1, 3.3, 8.4(8); c. 770, s. 74.4; 1989 (Reg. Sess., 1990), c. 813, ss. 14, 15; 1991, c. 598, s. 5; c. 689, s. 311; c. 690, s. 1; 1993, c. 372, s. 1; c. 484, s. 2; 1995, c. 17, s. 6; c. 477, s. 1; 1996, 2nd Ex. Sess., c. 13, ss. 1.1, 9.1, 9.2; 1997-475, s. 1.1; 1998-22, s. 5; 1998-55, ss. 8, 14; 1998-98, ss. 13.2, 48(a), (b); 1998-121, ss. 3, 5; 1998-197, s. 1; 1998-212, s. 29A.1(a); 1999-337, ss. 29, 30; 1999-360, s. 3(a), (b); 1999-438, s. 1; 2000-140, s. 67(a).)

Effect of Amendments. — Session Laws 2000-140, s. 67(a), effective July 21, 2000, rewrote subsection (c).

§ 105-164.6A. Voluntary collection of use tax by sellers.

(a) Voluntary Collection Agreements. — The Secretary may enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items of tangible personal property the seller sells. For the purpose of this section, a seller is a person who is engaged in the business of selling tangible personal property for use in this State and who does not have sufficient nexus with this State to be required to collect use tax on the sales.

(b) Mandatory Provisions. — The agreements must contain the following provisions:

(1) The seller is not liable for use tax not paid to it by a customer.
(2) A customer's payment of a use tax to the seller relieves the customer of liability for the use tax.
(3) The seller must remit all use taxes it collects from customers on or before the due date specified in the agreement, which may not be later than 31 days after the end of a quarter or other collection period.
(4) A seller who fails to remit use taxes collected on behalf of its customers by the due date specified in the agreement is subject to the interest and penalties provided in Article 9 of this Chapter with respect to the taxes to the same extent as if the seller were a retailer and were required to collect use taxes under this Article.

(c) Optional Provisions. — The agreements may contain the following provisions:

(1) The seller will collect the use tax only on items that are subject to the general rate of tax.
(2) The seller will collect local use taxes only to the extent they are at the same rate in every unit of local government in the State.
(3) The seller will remit the tax and file reports in the form prescribed by the Secretary.
(4) Other provisions establishing the types of transactions on which the seller will collect tax and prescribing administrative procedures and requirements. (1996, 2nd Ex. Sess., c. 14, s. 11; 2000-120, s. 4.)

Effect of Amendments. — Session Laws 2000-120, s. 4, effective July 14, 2000, rewrote subdivision (b)(1), which read "The customer may elect to pay the use tax directly to the Secretary in accordance with law rather than to the seller."

§ 105-164.7. Sales tax part of purchase price.

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge to or collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 2000-19, s. 1.3.)

Editor's Note. — Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, s. 1.3, effective June 26, 2000, rewrote the section.

Part 3. Exemptions and Exclusions.

§ 105-164.13. Retail sales and use tax.

The sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this Article:

Agricultural Group.

(1) Commercial fertilizer on which the inspection tax is paid and lime and land plaster used for agricultural purposes whether the inspection tax is paid or not.

(2) Seeds.

(2a) Any of the following when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes:

a. Remedies, vaccines, medications, litter materials, and feeds for animals.

b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.

c. Defoliants for use on cotton or other crops.

d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

(3) Products of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.

(4) Cotton, tobacco, peanuts or other farm products sold to manufacturers for further manufacturing or processing.

(4a) Baby chicks and poults sold for commercial poultry or egg production.

(4b) Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant and ice used to preserve agriculture, aquaculture and commercial fishery products until the products are sold at retail.

(4c) Any of the following:

a. Commercially manufactured facilities to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities.

b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities.

c. Commercially manufactured equipment, and parts and accessories for the equipment, used in a facility that is exempt from tax under this subdivision or in an enclosure or a structure whose building materials are exempt from tax under this subdivision.

(4d) The lease or rental of tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse.

Industrial Group.

(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered retailers or wholesale merchants, for the purpose of resale except as modified by G.S. 105-164.3(23). This exemption does not extend to or include retail sales to users or consumers not for resale.

(6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1068, s. 1.

(7) Sales of products of waters in their original or unmanufactured state when such sales are made by the producer in the capacity of producer. Fish and seafoods are likewise exempt when sold by the fisherman in that capacity.

(8) Sales of tangible personal property to a manufacturer which enters into or becomes an ingredient or component part of tangible personal property which is manufactured.

(8a) Sales to a small power production facility, as defined in 16 U.S.C. § 796(17)(A), of fuel used by the facility to generate electricity.

(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to persons for use by them principally in commercial fishing operations within the meaning of G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, "fish" is defined as in G.S. 113-129(7).

(10) Sales to commercial laundries or to pressing and dry cleaning establishments of articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.

Motor Fuels Group.

(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility.

(11) Any of the following fuel:

a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A or G.S. 105-449.107.

b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107.

(11a) Sales of diesel fuel to railroad companies for use in rolling stock other than motor vehicles. The definitions in G.S. 105-333 apply in this subdivision.

Medical Group.

(12) Sales of any of the following items:

a. Therapeutic, prosthetic, or artificial devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease, or incapacity and that are sold on the written prescription of a physician, dentist, or other professional person licensed to prescribe.

b. Crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of a physician or an optometrist.

c. Orthopedic appliances designed to be worn by the purchaser or user.

d. Durable medical equipment and related medical supplies that are covered under the Medicare or Medicaid program and are sold on either a certificate of medical necessity or a written prescription of a physician, dentist, or other professional person licensed to prescribe. This exemption applies whether or not the item is purchased by a Medicare or Medicaid beneficiary.

(13) All of the following drugs, including the constituent elements and ingredients used to produce the drugs, the packaging materials, and any instructions or information about the product included in the package with the drugs:

a. Prescription drugs.

b. Nonprescription drugs sold on prescription of physicians, dentists, or veterinarians.

c. Insulin.

(13a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16.

(13b) Repealed by Session Laws 1999, c. 438, s. 7, effective October 1, 1999.

(13c) Nutritional supplements sold by a chiropractic physician at a chiropractic office to a patient as part of the patient's plan of treatment, as authorized by G.S. 90-151.1.

Printed Materials Group.

(14) Public school books on the adopted list, the selling price of which is fixed by State contract.

(14a) Recodified as subdivision (33a) by Session Laws 2000-120, s. 5, effective July 14, 2000.

Transactions Group.

(15) Accounts of purchasers, representing taxable sales, on which the tax imposed by this Article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales, provided, however, they must be added to gross sales if afterwards collected.
(16) Sales of an article repossessed by the vendor if tax was paid on the sales price of the article.

Exempt Status Group.

(17) Sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.

Unclassified Group.

(18) Funeral expenses, including coffins and caskets, not to exceed one thousand five hundred dollars ($1,500). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the general rate of tax set in G.S. 105-164.4. However, "services rendered" shall not include those services which have been taxed pursuant to G.S. 105-164.4(4), or to those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of a deceased; and "funeral expenses" and "services rendered" shall not include death certificates procured by or at the specific direction of the family or personal representative of a deceased. Where coffins, caskets or vaults are purchased direct and a separate charge is paid for services, the provisions of this subdivision shall apply to the total for both.
(19) Repealed by Session Laws 1991, c. 618, s. 1.
(20) Sales by blind merchants operating under supervision of the Department of Health and Human Services.
(21) The lease or rental of motion picture films used for exhibition purposes where the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to said business of the lessee.
(22) The lease or rental of films, motion picture films, transcriptions and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission.
(22a) Sales of audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For the purpose of this subdivision, an "audiovisual master" is an audio or video film, tape, or disk or another audio or video storage device from which all other copies are made.
(23) Sales of the following packaging items:
a. Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.

b. A container that is used as packaging by the owner of the container or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse.

(24) Sales of fuel and other items of tangible personal property for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for the use of such vessel; provided, however, that sales of fuel and other items of tangible personal property made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of the sales tax.

(25) Sales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.

(26) Food sold not for profit by public or private school cafeterias within school buildings during the regular school day.

(26a) Food sold not for profit by a public school cafeteria to a child care center that participates in the Child and Adult Care Food Program of the Department of Public Instruction.

(27) Meals and food products served to students in dining rooms regularly operated by State or private educational institutions or student organizations thereof.

(28) Sales of newspapers by newspaper street vendors and by newspaper carriers making door-to-door deliveries and sales of magazines by magazine vendors making door-to-door sales.

(29) Sales to the North Carolina Museum of Art of paintings and other objects or works of art for public display, the purchases of which are financed in whole or in part by gifts or donations.

(29a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 5.

(30) Sales from vending machines when sold by the owner or lessee of said machines at a price of one cent (1¢) per sale.

(31) Sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to the refunds provided by G.S. 105-164.14(b), when such meals are delivered to the purchasers at their places of abode.

(31a) Food sold by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities.

(31b) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16.

(32) Sales of motor vehicles, the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis.

(33) Tangible personal property purchased solely for the purpose of export to a foreign country for exclusive use or consumption in that or some other foreign country, either in the direct performance or rendition of professional or commercial services, or in the direct conduct or operation of a trade or business, all of which purposes are actually consummated, or purchased by the government of a foreign country for export which purpose is actually consummated. "Export" shall include the acts of possessing and marshalling such property, by either the seller or the purchaser, for transportation to a foreign country, but shall not include devoting such property to any other use in North Carolina or the United States. "Foreign country" shall not include any territory or possession of the United States.

In order to qualify for this exemption, an affidavit of export indicating compliance with the terms and conditions of this exemption, as prescribed by the Secretary of Revenue, must be submitted by the purchaser to the seller, and retained by the seller to evidence qualification for the exemption.

If the purposes qualifying the property for exemption are not consummated, the purchaser shall be liable for the tax which was avoided by the execution of the aforesaid affidavit as well as for applicable penalties and interest and the affidavit shall contain express provision that the purchaser has recognized and assumed such liability.

The principal purpose of this exemption is to encourage the flow of commerce through North Carolina ports that is now moving through out-of-state ports. However, it is not intended that property acquired for personal use or consumption by the purchaser, including gifts, shall be exempt hereunder.

(33a) Tangible personal property sold by a retailer to a purchaser within or without this State, when the property is delivered in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State and the purchaser does not subsequently use the property in this State.

(34) Sales of items by a nonprofit civic, charitable, educational, scientific or literary organization when the net proceeds of the sales will be given or contributed to the State of North Carolina or to one or more of its agencies or instrumentalities, or to one or more nonprofit charitable organizations, one of whose purposes is to serve as a conduit through which such net proceeds will flow to the State or to one or more of its agencies or instrumentalities.

(35) Sales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization when all of the following conditions are met:

a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization's activities.

b. The proceeds of the sale are actually used for the organization's activities.

c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization's annual sales period.

(36) Advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper.

(37) Spirituous liquor. This exemption does not prohibit the levy of sales and use taxes on mixed beverages. As used in this subdivision, the terms "spirituous liquor" and "mixed beverage" have the same meanings as in G.S. 18B-101(14) and G.S. 18B-101(10) respectively.

(38) Food and other items lawfully purchased under the Food Stamp Program, 7 U.S.C. § 51, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Food Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Food Program.

(39) Repealed by Session Laws 1999-438, s. 10, effective October 1, 1999.

(40) Sales to the Department of Transportation.

(41) Sales of mobile classrooms to local boards of education or to local boards of trustees of community colleges.

(42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit

organization, contributions to which are deductible as charitable contributions for federal income tax purposes.

(43) Custom computer software. — "Custom computer software" is software written in accordance with the specifications of a specific customer. The term includes a user manual or other documentation that accompanies the sale of the software. The term does not include prewritten software that can be installed and executed with no changes to the software's source code other than changes made to configure hardware or software.

(44) Piped natural gas. — This item is exempt because it is taxed under Article 5E of this Chapter.

(45) Sales of the following items to an interstate passenger air carrier or an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories.

(46) Sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes. (1957, c. 1340, s. 5; 1959, c. 670; c. 1259, s. 5; 1961, c. 826, s. 2; cc. 1103, 1163; 1963, c. 1169, ss. 7-9; 1965, c. 1041; 1967, c. 756; 1969, c. 907; 1971, c. 990; 1973, c. 476, s. 143; c. 708, s. 1; cc. 1064, 1076; c. 1287, s. 8; 1975, 2nd Sess., c. 982; 1977, c. 771, s. 4; 1977, 2nd Sess., c. 1219, s. 43.6; 1979, c. 46, ss. 1, 2; c. 156, s. 1; c. 201; c. 625, ss. 1, 2; c. 801, ss. 74, 75; 1979, 2nd Sess., c. 1099, s. 1; 1981, cc. 14, 207, 982; 1983, c. 156; c. 570, s. 21; c. 713, ss. 91, 92; c. 873; c. 887; 1983 (Reg. Sess., 1984), c. 1071, s. 1; 1985, c. 114, s. 4; c. 555; c. 656, ss. 24, 25; 1985 (Reg. Sess., 1986), c. 953; c. 973; c. 982, s. 2; 1987, c. 800, s. 1; 1987 (Reg. Sess., 1988), c. 937; 1989, c. 692, ss. 3.5, 3.6; c. 748, s. 1; 1989 (Reg. Sess., 1990), c. 989; c. 1060; c. 1068, ss. 1, 2; 1991, c. 45, s. 17; c. 79, s. 2; c. 618, s. 1; c. 689, s. 314; 1991 (Reg. Sess., 1992), c. 931, ss. 1, 2; c. 935, s. 1; c. 940, s. 1; c. 949, s. 1; c. 1007, s. 44; 1993, c. 484, s. 3; c. 513, s. 11; 1993 (Reg. Sess., 1994), c. 739, s. 1; 1995, c. 390, s. 14; c. 451, s. 1; c. 477, ss. 2, 3; 1995 (Reg. Sess., 1996), c. 646, ss. 4, 5; c. 649, s. 1; 1996, 2nd Ex. Sess., c. 14, ss. 15, 16; 1997-369, s. 2; 1997-370, s. 2; 1997-397, s. 1; 1997-423, s. 3; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1997-506, s. 36; 1997-521, s. 1; 1998-22, s. 6; 1998-55, ss. 9, 15; 1998-98, ss. 14, 14.1, 49, 107; 1998-146, s. 9; 1998-171, s. 10(a), (b); 1998-225, s. 4.3; 1999-337, s. 31; 1999-360, s. 7(a)-(c); 1999-438, ss. 5-12; 2000-120, s. 5; 2000-153, s. 5.)

Effect of Amendments. —

Session Laws 2000-120, s. 5, effective July 14, 2000, recodified former subdivision (14a) as subdivision (33a), and in that subdivision substituted "Tangible personal property sold by a retailer" for "Printed material which is sold by a printer," substituted the first instance of "the property" for "such printed material," substituted "State and" for "State, if," and substituted "subsequently use the property" for "thereafter use the printed material."

Session Laws 2000-153, s. 5, effective August 2, 2000, deleted the former last sentence in subdivision (22a), which read "For the purpose of this subdivision, a production company is a person engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes."

§ 105-164.14. Certain refunds authorized.

(a) Interstate Carriers. — An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on fuel, lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period.

(b) Nonprofit Entities and Hospital Drugs. — A nonprofit entity included in the following list is allowed a semiannual refund of sales and use taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property for use in carrying on the work of the nonprofit entity:

(1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes.

(2) Educational institutions not operated for profit.

(3) Churches, orphanages, and other charitable or religious institutions and organizations not operated for profit.

(4) Qualified retirement facilities whose property is excluded from property tax under G.S. 105-278.6A.

Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity.

A hospital that is not allowed a refund under this subsection of sales and use taxes paid on its direct purchases of tangible personal property is allowed a semiannual refund of sales and use taxes paid by it on medicines and drugs purchased for use in carrying out its work.

The refunds allowed under this subsection for certain nonprofit entities and for medicines and drugs purchased by hospitals do not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c).

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

(c) Certain Governmental Entities. — A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b) A local school administrative unit.

(3) A metropolitan sewerage district or a metropolitan water district in this State.

(4) A water and sewer authority created under Chapter 162A of the General Statutes.

(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.

(6) A sanitary district.

(7) A regional solid waste management authority created pursuant to G.S. 153A-421.

(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.

(10) A regional council of governments created pursuant to G.S. 160A-470.

(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.

(12) A regional planning commission created pursuant to G.S. 153A-391.

(13) A regional sports authority created pursuant to G.S. 160A-479.

(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.

(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.

(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.
(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.
(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.
(21) The University of North Carolina Hospitals at Chapel Hill.
(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes.

(d) Late Applications. — Refunds applied for more than three years after the due date are barred.

(e) State Agencies. — The State is allowed quarterly refunds of local sales and use taxes paid by a State agency on direct purchases of tangible personal property and local sales and use taxes paid indirectly by the State agency on building materials, supplies, fixtures, and equipment that become a part of or annexed to a building or structure that is owned or leased by the State agency and is being erected, altered, or repaired for use by the State agency. This subsection does not apply to purchases for which a State agency is allowed a refund under subsection (c) of this section.

A person who pays local sales and use taxes on building materials or other tangible personal property for a State building project shall give the State agency for whose project the property was purchased a signed statement containing all of the following information:
(1) The date the property was purchased.
(2) The type of property purchased.
(3) The project for which the property was used.
(4) If the property was purchased in this State, the county in which it was purchased.
(5) If the property was not purchased in this State, the county in which the property was used.
(6) The amount of sales and use taxes paid.

If the property was purchased in this State, the person shall attach a copy of the sales receipt to the statement. A State agency to whom a statement is submitted shall verify the accuracy of the statement.

Within 15 days after the end of each calendar quarter, every State agency shall file with the Secretary a written application for a refund of taxes to which this subsection applies paid by the agency during the quarter. The application shall contain all information required by the Secretary. The Secretary shall credit the local sales and use tax refunds directly to the General Fund.

(f) Information to Counties. — Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund.

(g) Major Recycling Facilities. — The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred.

(h) Low Enterprise Tier Machinery. — Eligible taxpayers are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) Refunds. — An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. — A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3.

(3) Machinery and equipment. — For the purpose of this subsection, the term "machinery and equipment" means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.4(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3, capitalizes them for tax purposes under the Code, and does not lease them to another party.

(i) **(See Editor's note)** Nonprofit Insurance Companies. — Eligible nonprofit insurance companies are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) **(Effective until January 1, 2004)** Refunds. — An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of its real property, and on computer systems hardware and software it capitalizes for tax pur-

§ 105-164.14(i)(1) is set out twice. See notes.

poses under the Code. Liability incurred indirectly by the company for sales and use taxes on these items is considered tax paid by the company. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the insurance company's fiscal year. Refunds applied for after the due date are barred.

(1) **(Effective January 1, 2004 until January 1, 2008)** Refunds. — An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of its real property. Liability incurred indirectly by the company for sales and use taxes on these items is considered tax paid by the company. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the insurance company's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. — An insurance company is eligible for the refund provided in this subsection if it meets all of the following conditions:
   a. It is a nonprofit corporation.
   b. It is operated for the exclusive purpose of providing insurance and annuity contracts to or for the benefit of (i) organizations exempt from federal income tax under section 501(c)(3) of the Code and their employees or (ii) public institutions and their employees.
   c. The Secretary of Commerce has certified that the insurance company will invest at least twenty million dollars ($20,000,000) in constructing a facility in this State for the conduct of its operations.

(3) Forfeiture. — If an eligible insurance company does not make the required minimum investment within five years after its first refund under this subsection, it loses its eligibility and forfeits all refunds already received under this subsection. Upon forfeiture, the company is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A company that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236. (1957, c. 1340, s. 5; 1961, c. 826, s. 2; 1963, cc. 169, 1134; 1965, c. 1006; 1967, c. 1110, s. 6; 1969, c. 1298, s. 1; 1971, cc. 89, 286; 1973, c. 476, s. 193; 1977, c. 895, s. 1; 1979, c. 47; c. 801, ss. 77, 79-82; 1983, c. 594, s. 1; c. 891, s. 13; 1983 (Reg. Sess., 1984), c. 1097, s. 7; 1985, cc. 431, 523; 1985 (Reg. Sess., 1986), c. 863, s. 5; 1987, c. 557, ss. 8, 9; c. 850, s. 16; 1987 (Reg. Sess., 1988), c. 1044, s. 5; 1989, c. 168, s. 5; c. 251; c. 780, s. 1.1; 1989 (Reg. Sess., 1990), c. 936, s. 4; 1991, c. 356, s. 1; c. 689, s. 190.1(b); 1991 (Reg. Sess., 1992), c. 814, s. 1; c. 917, s. 1; c. 1030, s. 25; 1995, c. 17, s. 8; c. 21, s. 1; c. 458, s. 7; c. 461, s. 13; c. 472, s. 1; 1995 (Reg. Sess., 1996), c. 646, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 15.7(a); 1997-340, s. 1; 1997-393, s. 2; 1997-423, s. 1; 1997-426, s. 5; 1997-502, s. 3; 1998-55, ss. 16, 17; 1998-98, s. 15; 1998-212, ss. 29A.4(a), 29A.14(i), 29A.18(b); 1999-360, ss. 4, 5(a), (b), 9; 1999-438, s. 14; 2000-56, s. 9; 2000-140, s. 92.A(c).)

Editor's Note. —

Session Laws 2000-140, s. 92.A(c), amended Session Laws 2000-56, s. 10(h), which had provided: "Section 12 of this act becomes effective May 1, 1999, and applies to taxes paid on or after that date. Section 12 is repealed for taxes paid on or after January 1, 2008," by substituting reference to section 9 for reference to section 12 in the first sentence. However, the reference to section 12 in the second sentence was left unchanged. Section 9 of Session Laws 2000-56 amended § 105-164.14. There is no section 12 in Session Laws 2000-56."

Effect of Amendments. —

Session Laws 2000-56, s. 9, effective May 1, 1999 and applicable to taxes paid on or after that date, in subdivision (i)(2)b, inserted subdivision designation (i) and substituted "Code and their employees or (ii) public institutions and their employees" for "Code, and their employees."

Session Laws 2000-140, s. 92.A(c), effective July 21, 2000, amended Session Laws 2000-56, s. 10(h) to provide that the amendment to this section by Session Laws 2000-140, s. 9 would be effective May 1, 1999, and would be applicable to taxes paid on or after that date.

Part 4. Reporting and Payment.

§ 105-164.16. Report and payment of taxes.

(a) Payment. — Taxes levied under this Article are due when a return is required to be filed. Every taxpayer liable for the tax imposed by this Article shall, within the specified time after the end of the appropriate reporting period, submit a return to the Secretary on a form prescribed by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the cost price of tangible personal property that was purchased or received during the reporting period and is subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information shall not be accepted. When an unacceptable return is submitted, the Secretary shall require a corrected return to be filed.

(b) General Reporting Periods. — Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than one hundred dollars ($100.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars ($20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount the taxpayer remitted with the estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed.

(c) Sales Tax on Utility Services. — A return for taxes levied under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c) is due quarterly or monthly as specified in this subsection. A utility that is allowed to pay tax under G.S. 105-120 on a quarterly basis shall file a quarterly return. All other utilities shall file a monthly return. A quarterly return is due by the last day of the month following the quarter covered by the return. A monthly return is due by the last day of the month following the month in which the taxes accrue, except the return for taxes that accrue in May. A return for taxes that accrue in May is due by June 25.

A utility that is required to file a monthly return may file an estimated return for the first month, the second month, or both the first and second months in a quarter. A utility is not subject to interest on or penalties for an underpayment submitted with an estimated monthly return if the utility timely pays at least ninety-five percent (95%) of the amount due with a monthly return and includes the underpayment with the company's return for the third month in the same quarter.

(d) **(Effective until taxable years beginning on or after January 1, 2003)** Use Tax on Out-of-State Purchases. — Use tax payable by an individual who purchases tangible personal property outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.

(d) **(Effective for taxable years beginning on or after January 1, 2003)** Use Tax on Out-of-State Purchases. — Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose shall file a use tax return on an annual basis. The annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the

§ 105-164.16(d) is set out twice. See notes.

individual's income tax return. (1957, c. 1340, s. 5; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1979, c. 801, s. 83; 1983 (Reg. Sess., 1984), c. 1097, s. 14; 1985, c. 656, s. 26; 1985 (Reg. Sess., 1986), c. 1007; 1987, c. 557, s. 6; 1989 (Reg. Sess., 1990), c. 945, s. 1; 1991, c. 690, s. 4; 1993, c. 450, s. 7; 1997-77, s. 1; 1998-121, s. 1; 1999-341, s. 1; 2000-120, s. 11.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until taxable years beginning on or after January 1, 2003. The second version of subsection (d) set out above is effective for taxable years beginning on or after January 1, 2003.

Effect of Amendments. —

Session Laws 2000-120, s. 11, effective for taxable years beginning on or after January 1, 2003, rewrote subsection (d).

Part 5. Records Required to Be Kept.

§ 105-164.27A. Direct pay certificate.

(a) Requirements. — A person who purchases tangible personal property whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a direct pay certificate:

(1) The place of business where the property will be used is not known at the time of the purchase and a different tax consequence applies depending on where the property is used.

(2) The manner in which the property will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

(b) Procedure. — An application for a direct pay certificate must be made on a form provided by the Secretary and contain the information required by the Secretary. The Secretary may grant the application if the Secretary finds that the applicant complies with the sales and use tax laws and that the applicant's compliance burden will be greatly reduced by use of the certificate.

(c) Effect. — A direct pay certificate authorizes its holder to purchase any tangible personal property without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the certificate holder. A person who purchases tangible personal property under a direct pay certificate is liable for use tax due on the purchase. The tax is payable when the property is placed in use. A direct pay certificate does not apply to taxes imposed under G.S. 105-164.4(a)(1f) or G.S. 105-164.4(a)(4a).

(d) Revocation. — A direct pay certificate is valid until the holder returns it to the Secretary or it is revoked by the Secretary. The Secretary may revoke a direct pay certificate if the holder of the certificate does not file a sales and use tax return on time, does not pay sales and use on time, or otherwise fails to comply with the sales and use tax laws. (2000-120, s. 1.)

Editor's Note. — Session Laws 2000-120, s. 18, made this section effective July 14, 2000.

This section was enacted as § 105-164.27 and was redesignated as this section at the direction of the Revisor of Statutes.

§ 105-164.28. Certificate of resale.

(a) Seller's Responsibility. — A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) For a sale made in person, the certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.
(2) For a sale made in person, the purchaser is engaged in the business of selling tangible personal property of the type sold.
(3) For a sale made over the Internet or by other remote means, the sales tax registration number given by the purchaser matches the number on the Department's registry.

(b) Liabilities. — A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 914, s. 1; 2000-120, s. 6.)

Effect of Amendments. — Session Laws 2000-120, s. 6, effective July 14, 2000, rewrote the section.

§ 105-164.29. Application for certificate of registration by wholesale merchants and retailers.

(a) Application. — To obtain a certificate of registration, a person must register with the Department. A wholesale merchant or retailer who has more than one business is required to obtain only one certificate of registration to cover all operations of the business throughout the State. An application for registration must be signed as follows:
(1) By the owner, if the owner is an individual.
(2) By a manager, member, or partner, if the owner is an association, a partnership, or a limited liability company.
(3) By an executive officer or some other person specifically authorized by the corporation to sign the application, if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written evidence of the person's authority must be attached to the application.

(b) Issuance. — A certificate of registration is not assignable and is valid only for the person in whose name it is issued. A copy of the certificate of registration must be displayed at each place of business.

(c) Term. — A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer who makes taxable sales becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales.

(d) Revocation. — Whenever a wholesale merchant or retailer fails to comply with this Article or violates G.S. 14-401.18, the Secretary, upon hearing, after giving 10 days' notice in writing, specifying the time and place of hearing and requiring the wholesale merchant or retailer to show cause why the certificate of registration should not be revoked, may revoke or suspend the certificate of registration. The notice may be served personally or by registered mail directed to the last known address of the wholesale merchant or retailer. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 apply to this section. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1084; 1991, c. 690, s. 5; 1993, c. 354, s. 17; c. 539, s. 705; 1994, Ex. Sess., c. 24, s. 14(c); 1999-333, s. 8; 2000-140, s. 67(b).)

Effect of Amendments. —
Session Laws 2000-140, s. 67(b), effective July 21, 2000, rewrote the section.

Part 7. Failure to Make Returns; Overpayments.

§ 105-164.38. Tax is a lien.

(a) The tax imposed by this Article is a lien upon all personal property of any person who is required by this Article to obtain a certificate of registration to engage in business and who stops engaging in the business by transferring the business, transferring the stock of goods of the business, or going out of business. A person who stops engaging in business must file the return required by this Article within 30 days after transferring the business, transferring the stock of goods of the business, or going out of business.

(b) Any person to whom the business or the stock of goods was transferred must withhold from the consideration paid for the business or stock of goods an amount sufficient to cover the taxes due until the person selling the business or stock of goods produces a statement from the Secretary showing that the taxes have been paid or that no taxes are due. If the person who buys a business or stock of goods fails to withhold an amount sufficient to cover the taxes and the taxes remain unpaid after the 30-day period allowed, the buyer is personally liable for the unpaid taxes to the extent of the greater of the following:

(1) The consideration paid by the buyer for the business or the stock of goods.

(2) The fair market value of the business or the stock of goods.

(c) The period of limitations for assessing liability against the buyer of a business or the stock of goods of a business and for enforcing the lien against the property expires one year after the end of the period of limitations for assessment against the person who sold the business or the stock of goods. Except as otherwise provided in this section, a person who buys a business or the stock of goods of a business and that person's liability for unpaid taxes are subject to the provisions of G.S. 105-241.1, 105-241.2, 105-241.3, and 105-241.4 and to other remedies for the collection of taxes to the same extent as if the person had incurred the original tax liability. (1957, c. 1340, s. 5; 1963, c. 1169, s. 3; 1973, c. 476, s. 193; 1991, c. 690, s. 6; 1991 (Reg. Sess., 1992), c. 949, s. 2; 2000-140, s. 67(c).)

Effect of Amendments. — Session Laws 2000-140, s. 67(c), effective July 21, 2000, substituted "is" for "shall be" in the catchline and in subsection (a); inserted the subsection designations; substituted "certificate of registration" for "license" in subsection (a); substituted "must" for "shall" in subsections (a) and (b); and substituted "expires" for "shall expire" in subsection (c).

Part 8. Administration and Enforcement.

§ 105-164.43A. Certification of tax collector software and tax collector.

(a) Software. — The Secretary may certify a software program as a certified sales tax collection program if the Secretary determines that the program correctly determines all of the following and that the software can generate reports and returns required by the Secretary:

(1) The applicable combined State and local sales and use tax rate for a sale, based on a ship-to address.

(2) Whether or not an item is exempt from tax, based on a uniform product code or another method.
(3) Whether or not an exemption certificate offered by a purchaser is a valid certificate, based on the Department's registry of holders of exemption certificates.
(4) The amount of tax to be remitted for each taxpayer for a reporting period.
(5) Any other issue necessary for the application or calculation of sales and use tax due.

(b) Tax Collector. — The Secretary may certify an entity as a Certified Sales Tax Collector if the entity meets all of the following requirements:
(1) The entity uses a certified sales tax collection program.
(2) The entity has agreed to update its program upon notification by the Secretary.
(3) The entity integrates its certified sales tax collection program with the system of a retailer for whom the entity collects tax so that the tax due on a sale is determined at the time of the sale.
(4) The entity remits the taxes it collects at the time and in the manner specified by the Secretary.
(5) The entity agrees to file sales and use tax returns on behalf of the retailers for whom it collects tax.
(6) The entity enters into a contract with the Secretary and agrees to comply with all the conditions of the contract. (2000-120, s. 2.)

Editor's Note. — Session Laws 2000-120, s. 18, made this section effective July 14, 2000.

§ 105-164.43B. Contract with Certified Sales Tax Collector.

The Secretary may contract with a Certified Sales Tax Collector for the collection and remittance of sales and use taxes. A Certified Sales Tax Collector must file with the Secretary a bond or an irrevocable letter of credit in the amount set by the Secretary. A bond must be conditioned upon compliance with the contract, be payable to the State, and be in the form required by the Secretary. The amount a Certified Sales Tax Collector charges under the contract is a cost of collecting the tax and is payable from the amount collected. (2000-120, s. 2.)

Editor's Note. — Session Laws 2000-120, s. 18, made this section effective July 14, 2000.

§ 105-164.43C. Effect of contract.

(a) Retailer. — A retailer may contract with a Certified Sales Tax Collector to collect and remit sales and use taxes payable to the State on sales made by the retailer. In the absence of fraud, a retailer who contracts with a Certified Sales Tax Collector is not subject to audit by the State on the transactions it processes using the Collector's certified sales tax collection program. A retailer is subject to audit for transactions not processed by the Certified Sales Tax Collector.

The Department may review a retailer's procedures to determine if the certified sales tax collection program is functioning properly. A retailer who contracts with a Certified Sales Tax Collector is not liable for taxes due on sales processed using the program unless the retailer misrepresented the product it sells. A contract with a Certified Sales Tax Collector is not a factor in determining whether a person has nexus with this State for payment of any tax.

(b) Collector. — A Certified Sales Tax Collector is the agent of a seller who contracts with the Certified Sales Tax Collector for collection and remittance of sales and use taxes payable to this State. As the seller's agent, the Certified Sales Tax Collector is liable for sales tax due on all sales transactions processed by the Certified Sales Tax Collector unless the seller misrepresented the type of property sold. (2000-120, s. 2.)

Editor's Note. — Session Laws 2000-120, s. 18, made this section effective July 14, 2000.

§ 105-164.44E. (Effective April 1, 2003, until June 30, 2010) Transfer to the Dry-Cleaning Solvent Cleanup Fund.

At the end of each quarter, the Secretary must transfer to the Dry-Cleaning Solvent Cleanup Fund established under G.S. 143-215.104C an amount equal to fifteen percent (15%) of the net State sales and use taxes collected under G.S. 105-164.4(a)(4) during the previous fiscal year, as determined by the Secretary based on available data. (2000-19, s. 1.1.)

Editor's Note. — Session Laws 2000-19, s. 23, makes this section effective April 1, 2003 and provides for its expiration on June 30, 2010.

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Article 5A.

North Carolina Highway Use Tax.

§ 105-187.1. Definitions.

The following definitions and the definitions in G.S. 105-164.3 apply to this Article:

(1) "Commissioner" means the Commissioner of Motor Vehicles.

(2) "Division" means the Division of Motor Vehicles, Department of Transportation.

(3) "Long-term lease or rental" means a lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.

(3a) Retailer. — A retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles.

(4) "Short-term lease or rental" means a lease or rental that is not a long-term lease or rental. (1989, c. 692, s. 4.1; 1991, c. 79, s. 4; 2000-173, s. 10(a).)

Effect of Amendments. — Session Laws 2000-173, s. 10(a), effective August 2, 2000, added subdivision (3a).

§ 105-187.5. Alternate tax for those who rent or lease motor vehicles.

(a) Election. — A retailer may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle.

(b) Rate. — The tax rate on the gross receipts from the short-term lease or rental of a motor vehicle is eight percent (8%) and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent (3%). Gross receipts does not include the amount of any allowance given for a motor vehicle taken in trade as a partial payment on the lease or rental price. The maximum tax in G.S. 105-187.3(a) applies to a continuous lease or rental of a motor vehicle to the same person.

(c) Method. — A retailer who elects to pay tax on the gross receipts of the lease or rental of a motor vehicle shall make this election when applying for a certificate of title for the vehicle. To make the election, the retailer shall complete a form provided by the Division giving information needed to collect the alternate tax based on gross receipts. Once made, an election is irrevocable.

(d) Administration. — The Division shall notify the Secretary of Revenue of a retailer who makes the election under this section. A retailer who makes this election shall report and remit to the Secretary the tax on the gross receipts of the lease or rental of the motor vehicle. The Secretary shall administer the tax imposed by this section on gross receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed by this section. In addition, the Division may request the Secretary to audit a retailer who elects to pay tax on gross receipts under this section. When the Secretary conducts an audit at the request of the Division, the Division shall reimburse the Secretary for the cost of the audit, as determined by the Secretary. In conducting an audit of a retailer under this section, the Secretary may audit any sales of motor vehicles made by the retailer. (1989, c. 692, s. 4.1; 1991, c. 79, s. 5; c. 193, s. 3; 1995, c. 410, s. 1; 2000-173, s. 10(b).)

Effect of Amendments. — Session Laws 2000-173, s. 10(b), effective August 2, 2000, deleted "who is engaged in the business of leasing or renting motor vehicles" following "A retailer" at the the beginning of subsection (a).

§ 105-187.6. Exemptions from highway use tax.

(a) Full Exemptions. — The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.

(2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.

(3) To the same owner to reflect a change or correction in the owner's name.
(4) By will or intestacy.
(5) By a gift between a husband and wife, a parent and child, or a stepparent and a stepchild.
(6) By a distribution of marital or divisible property incident to a marital separation or divorce.
(7) To a handicapped person from the Department of Health and Human Services after the vehicle has been equipped by the Department for use by the handicapped.
(8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:
   a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.
   b. By a local board of education.

(b) Partial Exemptions. — A maximum tax of forty dollars ($40.00) applies when a certificate of title is issued as the result of a transfer of a motor vehicle:
(1) To a secured party who has a perfected security interest in the motor vehicle.
(2) To a partnership, limited liability company, or corporation as an incident to the formation of the partnership, limited liability company, or corporation, and no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Code, or to a partnership, limited liability company, or corporation by merger, conversion, or consolidation in accordance with applicable law.

(c) Out-of-state Vehicles. — A maximum tax of one hundred fifty dollars ($150.00) applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in another state for at least 90 days. (1989, c. 692, s. 4.1; c. 770, ss. 74.9, 74.10; 1991, c. 193, s. 4; c. 689, s. 323; 1993, c. 467, s. 1; 1995, c. 390, s. 31; 1997-443, s. 11A.118(a); 1998-98, s. 15.1; 1999-369, s. 5.9; 2000-140, s. 68.)

Effect of Amendments. —
Session Laws 2000-140, s. 68, effective July 21, 2000, substituted "Code" for "Internal Revenue Code as defined in G.S. 105-228.90" in subdivision (b)(2).

Article 5B.

Scrap Tire Disposal Tax.

§ 105-187.16. (Effective June 30, 2002) Tax imposed.

A privilege tax is imposed on a tire retailer at the rate of one percent (1%) of the sales price of each new tire sold at retail by the retailer. A privilege tax is imposed on a tire retailer and on a tire wholesale merchant at the rate of one percent (1%) of the sales price of each new tire sold by the retailer or wholesale merchant to a wholesale merchant or retailer for placement on a vehicle offered for sale, lease, or rental by the retailer or wholesale merchant. An excise tax is imposed on a new tire purchased for storage, use, or consumption in this State or for placement in this State on a vehicle offered for sale, lease, or rental. This excise tax is at the rate of one percent (1%) of the cost price of the tire. These taxes are in addition to all other taxes. (1991, c. 221, s. 1; 1993, c. 548, s. 1; 1997-209, s. 1.)

For this section as in effect until June 30, 2002, see the main volume.

Editor's Note. —

Session Laws 1993, c. 548, s. 9, provided that the amendment by c. 548, s. 1 would expire June 30, 1997. Session Laws 1997-209, s. 1, changed the expiration date to June 30, 2002. This section is set out above as it will read at that time.

The section above is set out to clarify the effective date, as set out in the main volume.

Article 5C.

White Goods Disposal Tax.

§ 105-187.20. Definitions.

The definitions in G.S. 105-164.3 apply to this Article, except that the term "sale" does not include lease or rental, and the following definitions apply to this Article:

(1) Chlorofluorocarbon refrigerant. — Defined in G.S. 130A-290(a).

(2) White goods. — Defined in G.S. 130A-290(a). (1993, c. 471, s. 3; 1998-24, s. 7; 2000-109, s. 9(a).)

Editor's Note. — Session Laws 1993, c. 471, s. 11, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 15.1(b), and further amended by Session Laws 1998-24, s. 7, made this section effective January 1, 1994 and provided that it would expire July 1, 2001. Session Laws 2000-109, s. 9(a), effective July 13, 2000, deleted the expiration date.

§ 105-187.21. Tax imposed.

A privilege tax is imposed on a white goods retailer at a flat rate for each new white good that is sold by the retailer. An excise tax is imposed on a new white good purchased outside the State for storage, use, or consumption in this State. The rate of the privilege tax and the excise tax is three dollars ($3.00). These taxes are in addition to all other taxes. (1993, c. 471, s. 3; 1998-24, ss. 1, 7; 2000-109, s. 9(a).)

Editor's Note. —

Session Laws 1993, c. 471, s. 11, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 15.1(b), and further amended by Session Laws 1998-24, s. 7, made this section effective January 1, 1994 and provided that it would expire July 1, 2001. Session Laws 2000-109, s. 9(a), effective July 13, 2000, deleted the expiration date.

§ 105-187.22. Administration.

The privilege tax this Article imposes on a white goods retailer is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of a new white good in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new white good is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same white good. (1993, c. 471, s. 3; 1998-24, s. 7; 2000-109, s. 9(a).)

Editor's Note. — Session Laws 1993, c. 471, s. 11, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 15.1(b), and further amended by Session Laws 1998-24, s. 7, made this section effective January 1, 1994 and provided that it would expire July 1, 2001. Session Laws 2000-109, s. 9(a), effective July 13, 2000, deleted the expiration date.

§ 105-187.23. Exemptions and refunds.

Exemptions. — Except for the exemption provided in G.S. 105-164.13(17), the exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this Article.

Refunds. — The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article. A person who buys at least 50 new white goods of any kind in the same sale or purchase may obtain a refund equal to sixty percent (60%) of the amount of tax imposed by this Article on the white goods when all of the white goods purchased are to be placed in new or remodeled dwelling units that are located in this State and do not contain the kind of white goods purchased. To obtain a refund, a person must file an application for a refund with the Secretary. The application must contain the information required by the Secretary, be signed by the purchaser of the white goods, and be submitted by the date set by the Secretary. (1993, c. 471, s. 3; 1998-24, s. 7; 2000-109, s. 9(a).)

Editor's Note. — Session Laws 1993, c. 471, s. 11, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 15.1(b), and further amended by Session Laws 1998-24, s. 7, made this section effective January 1, 1994 and provided that it would expire July 1, 2001. Session Laws 2000-109, s. 9(a), effective July 13, 2000, deleted the expiration date.

§ 105-187.24. Use of tax proceeds.

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty percent (20%) of the net tax proceeds to the White Goods Management Account. The Secretary shall distribute the remaining seventy-two percent (72%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer. The Department shall not distribute the tax proceeds to a county when notified not to do so by the Department of Environment and Natural Resources under G.S. 130A-309.87. If a county is not entitled to a distribution, the proceeds allocated for that county will be credited to the White Goods Management Account.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county. (1993, c. 471, s. 3; 1993 (Reg. Sess., 1994), c. 769, s. 15.1(b); 1998-24, ss. 2, 7; 2000-109, s. 9(a).)

Editor's Note. —

Session Laws 1993, c. 471, s. 11, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 15.1(b), and further amended by Session Laws 1998-24, s. 7, made this section effective January 1, 1994 and provided that it would expire July 1, 2001. Session Laws 2000-109, s. 9(a), effective July 13, 2000, deleted the expiration date.

Article 5D.

Dry-cleaning Solvent Tax.

(Repealed effective January 1, 2010)

§ 105-187.30. (Repealed effective January 1, 2010) Definitions.

Editor's Note. —
Session Laws 1997-392, s. 5, as amended by Session Laws 2000-19, s. 17, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until 30 June 2001."

§ 105-187.31. (Effective October 1, 2001, until January 1, 2010) Tax imposed.

A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the excise tax is ten dollars ($10.00) for each gallon of dry-cleaning solvent that is chlorine-based and one dollar and thirty-five cents ($1.35) for each gallon of dry-cleaning solvent that is hydrocarbon-based. These taxes are in addition to all other taxes. (1997-392, s. 4; 2000-19, s. 1.2.)

For this section as in effect until October 1, 2001, see the main volume.

Editor's Note. — Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, s. 1.2, effective October 1, 2001, and expiring January 1, 2010, in the third sentence, substituted "ten dollars ($10.00)" for "five dollars and eighty-five cents ($5.85)" and "one dollar and thirty-five cents ($1.35)" for "eighty cents (80¢)."

Article 5E.

Piped Natural Gas Tax.

§ 105-187.44. Distribution of part of tax proceeds to cities.

Editor's Note. —
Session Laws 1998-22, s. 14, as amended by Session Laws 2000-140, s. 85, provides that notwithstanding G.S. 105-187.44(b), as enacted by this act, the amount distributed to a city under G.S. 105-187.44(b) for taxes collected for each of the quarters in 1999-2000 and 2000-2001 fiscal years may not exceed its benchmark amount until each city receives an amount equal to its benchmark amount. Each quarter, the Secretary of Revenue shall determine a city's benchmark amount and the amount it would receive under G.S. 105-187.44(b) if not for the redistribution required by this section. The Secretary shall identify those cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts and shall determine the total dollar amount of the

shortfall. The Secretary shall reduce the amount to be distributed to those cities whose distribution amount under G.S. 105-187.44(b) exceeds their benchmark amount by the total dollar amount of the shortfall determined for that quarter in proportion to each city's excess. However, in no event may a city's distribution amount be reduced below its benchmark amount. The Secretary will redistribute these monies to the cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts in proportion to each city's shortfall. In any quarter that a city does not have a prior year's distribution for the corresponding quarter in fiscal year 1998-99, that city is excluded from the redistribution required under this section for that quarter. In that case, the city will receive the amount it is entitled to receive under G.S. 105-187.44(b). For the purposes of this provision, the term "benchmark amount" means the amount a city received under G.S. 105-116.1 attributable to piped natural gas for the corresponding quarter during the fiscal year 1998-99. Section 14 also provides for a study by the Revenue Laws Study Committee of the impact of this act and a report of its findings.

ARTICLE 8E.

Excise Stamp Tax on Conveyances.

§ 105-228.30. Imposition of excise tax; distribution of proceeds.

(a) An excise tax is levied on each instrument by which any interest in real property is conveyed to another person. The tax rate is one dollar ($1.00) on each five hundred dollars ($500.00) or fractional part thereof of the consideration or value of the interest conveyed. The transferor must pay the tax to the register of deeds of the county in which the real estate is located before recording the instrument of conveyance. If the instrument transfers a parcel of real estate lying in two or more counties, however, the tax must be paid to the register of deeds of the county in which the greater part of the real estate with respect to value lies.

The excise tax on instruments imposed by this Article applies to timber deeds and contracts for the sale of standing timber to the same extent as if these deeds and contracts conveyed an interest in real property.

(b) The register of deeds of each county must remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county must credit one-half of the proceeds to the county's general fund and remit the remaining one-half of the proceeds, less the county's allowance for administrative expenses, to the Department of Revenue on a quarterly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue must credit seventy-five percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7. (1967, c. 986, s. 1; 1991, c. 689, s. 338; 1991 (Reg. Sess., 1992), c. 1019, s. 1; 1993 (Reg. Sess., 1994), c. 772, s. 2; 1995, c. 456, s. 3; 1999-28, s. 1; 2000-16, s. 1.)

Effect of Amendments. —
Session Laws 2000-16, s. 1, effective July 1, 2000, and applicable to timber deeds and contracts for the sale of standing timber executed on or after that date, added the second paragraph of subsection (a).

§ 105-228.35. Administrative provisions.

Except as otherwise provided in this Article, the provisions of Article 9 of this Chapter apply to this Article. (1967, c. 986, s. 1; 1999-28, s. 1; 2000-170, s. 1.)

Effect of Amendments. —
Session Laws 2000-170, s. 1, effective August 2, 2000, and applicable retroactively to taxes paid on or after January 1, 2000, inserted "Except as otherwise provided in this Article."

§ 105-228.37. Refund of overpayment of tax.

(a) Refund Request. — A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. — A board of county commissioners must review a request for refund and must follow the time limitations set in G.S. 105-266.1 for holding a hearing and making a decision. If the board decides that a refund is due, it must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may ask the Secretary to review the decision. The board must send the Secretary a copy of a decision on a request for refund.

(c) Review by Secretary. — A taxpayer whose request for a refund is denied by a board of county commissioners may obtain a review of the board's decision by the Secretary. The request must be made in writing and must be filed within 30 days after the taxpayer receives the board's decision denying the refund. The Secretary must send the board of county commissioners a copy of the Secretary's decision made on the request. If the Secretary determines that a refund is due, the board of county commissioners must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. A decision of the Secretary is binding on a board of county commissioners.

(d) Judicial Review. — A taxpayer who disagrees with a decision of the Secretary may bring an action against the county and the State to recover the disputed overpayment. The action may be brought in the Superior Court of Wake County or in the superior court of the county where the tax was paid.

(e) Recording Correct Deed. — Before a tax is refunded, the taxpayer must record a new instrument reflecting the correct amount of tax due. If no tax is due because an instrument was recorded in the wrong county, then the taxpayer must record a document stating that no tax was owed because the instrument being corrected was recorded in the wrong county. The taxpayer must include in the document the names of the grantors and grantees and the deed book and page number of the instrument being corrected.

When a taxpayer records a corrected instrument, the taxpayer must inform the register of deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the register of deeds a copy of the decision granting the refund that shows the correct amount of tax due. The correcting instrument must include the deed book and page number of the instrument being corrected. The register of deeds must notify the county finance officer and the Secretary when the correcting instrument has been recorded.

(f) Interest. — An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue. Interest begins to accrue on an overpayment 30 days after the request for a refund is filed by the taxpayer with the board of county commissioners. (2000-170, s. 2.)

Editor's Note. — Session Laws 2000-170, s. 4, made this section effective August 2, 2000, and applicable retroactively to taxes paid on or after January 1, 2000.

Session Laws 2000-170, s. 3, provides that, notwithstanding G.S. 105-228.37, as enacted by the act, a refund request filed by a taxpayer who paid the tax imposed by Chapter 105, Article 8E, on or after January 1, 2000, and whose time limit for requesting a refund expires on or before August 1, 2000, is considered timely if the request is filed with the board of county commissioners by October 1, 2000.

Article 9.

General Administration; Penalties and Remedies.

§ 105-228.90. Scope and definitions.

(a) Scope. — This Article applies to Subchapters I, V, and VIII of this Chapter, to the annual report filing requirements of G.S. 55-16-22, and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes.

(b) Definitions. — The following definitions apply in this Article:

(1) Charter school. — A nonprofit corporation that has a charter under G.S. 115C-238.29D to operate a charter school.

(1a) City. — A city as defined by G.S. 160A-1(2). The term also includes an urban service district defined by the governing board of a consolidated city-county, as defined by G.S. 160B-2(1).

(1b) **(See Editor's note)** Code. — The Internal Revenue Code as enacted as of January 1, 2000, including any provisions enacted as of that date which become effective either before or after that date.

(1c) County. — Any one of the counties listed in G.S. 153A-10. The term also includes a consolidated city-county as defined by G.S. 160B-2(1).

(2) Department. — The Department of Revenue.

(3) Electronic Funds Transfer. — A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(4) Reserved.

(5) Person. — An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.

(6) Secretary. — The Secretary of Revenue.

(7) Tax. — A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms "tax" and "additional tax" include penalties and interest as well as the principal amount.

(8) Taxpayer. — A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes. (1991 (Reg. Sess., 1992), c. 930, s. 13; 1993, c. 12, s. 1; c. 354, s. 18; c. 450, s. 1; 1993 (Reg. Sess., 1994), c. 662, s. 1; c. 745, s. 13; 1995, c. 17, s. 9; c. 461, s. 14; 1995 (Reg. Sess., 1996), c. 664, s. 1; 1997-55, s. 1; 1997-475, s. 6.9; 1998-171, s. 1; 1999-415, s. 1; 2000-72, s. 1; 2000-126, s. 1; 2000-140, s. 69.)

Editor's Note. —
Session Laws 2000-126, s. 7, provides that, notwithstanding Session Laws 2000-126, s. 1 (which amended this section), any amendments to the Internal Revenue Code enacted in 1999 that increase North Carolina taxable income for the 1999 taxable year become effective for taxable years beginning on or after January 1, 2000.

Effect of Amendments. —
Session Laws 2000-72, s. 1, effective October 1, 2000, added present subdivision (b)(1) and redesignated former subdivisions (b)(1), (1a) and (1b) in alphabetical order as present subdivisions (b)(1a), (1b) and (1c), respectively.

Session Laws 2000-126, s. 1, effective July 14, 2000, substituted "January 1, 2000" for "June 1, 1999" in present subdivision (b)(1b).

Session Laws 2000-140, s. 69, effective July 21, 2000, added subdivision (b)(2), defining "Department."

§ 105-230. Charter suspended for failure to report.

CASE NOTES

Effect of Suspension of Charter on Corporation's Capacity to Sue. —
A corporation could not bring suit to enforce contract entered into during a period of revenue suspension. South Mecklenburg Painting Contractors v. Cunnane Group, Inc., 134 N.C. App. 307, 517 S.E.2d 167 (1999).

§ 105-236. Penalties.

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. — When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

(1a) Penalty for Bad Electronic Funds Transfer. — When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. — For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. — For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the

amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. — In case of failure to file any return on the date it is due, determined with regard to any extension of time for filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. — In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the tax, except that the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. —

a. Finding of negligence. — For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large individual income tax deficiency. — In the case of individual income tax, if a taxpayer understates taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code.

c. Other large tax deficiency. — In the case of a tax other than individual income tax, if a taxpayer understates tax liability by twenty-five percent (25%) or more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency.

d. No double penalty. — If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.

e. Inheritance and gift tax deficiencies. — This subdivision does not apply to inheritance, estate, and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Exemption Certificate. — For misuse of an exemption certificate by a purchaser, the Secretary shall assess a penalty equal to two hundred fifty dollars ($250.00). An exemption certificate is a certificate issued by the Secretary that authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale. Examples of an exemption certificate include a certificate of resale, a direct pay certificate, and a farmer's certificate.

(5b) Road Tax Understatement. — If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. — If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. — Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. — Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of six years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. — Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of six years after the date of the violation.

(9a) Aid or Assistance. — Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class H felony.

(10) Failure to File Informational Returns. —

a. Repealed by Session Laws 1998-212, s. 29A.14(m), effective January 1, 1999.

b. The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements by that date, the amounts claimed on the payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed a penalty of fifty dollars ($50.00).

(10a) Filing a Frivolous Return. — If a taxpayer files a frivolous return under Part 2 of Article 4 of this Chapter, the Secretary shall assess a penalty in the amount of up to five hundred dollars ($500.00). A frivolous return is a return that meets both of the following requirements:

a. It fails to provide sufficient information to permit a determination that the return is correct or contains information which positively indicates the return is incorrect, and

b. It evidences an intention to delay, impede or negate the revenue laws of this State or purports to adopt a position that is lacking in seriousness.

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27. (1939, c. 158, s. 907; 1953, c. 1302, s. 7; 1959, c. 1259, s. 8; 1963, c. 1169, s. 6; 1967, c. 1110, s. 9; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 156, s. 2; 1985, c. 114, s. 11; 1985 (Reg. Sess., 1986), c. 983; 1987 (Reg. Sess., 1988), c. 1076; 1989, c. 557, ss. 7 to 10; 1989 (Reg. Sess., 1990), c. 1005, s. 9; 1991, c. 45, s. 27; 1991 (Reg. Sess., 1992), c. 914, s. 2; c. 1007, s. 10; 1993, c. 354, s. 22; c. 450, s. 10; c. 539, ss. 709, 710, 1292, 1293; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 390, s. 36; 1995 (Reg. Sess., 1996), c. 646, s. 10; c. 647, s. 51; c. 696, s. 1; 1997-6, s. 8; 1997-109, s. 3; 1998-178, ss. 1, 2; 1998-212, s. 29A.14(m); 1999-415, ss. 2, 3; 1999-438, ss. 15, 16; 2000-119, s. 2; 2000-120, s. 7; 2000-140, s. 70.)

Effect of Amendments. —

Session Laws 2000-119, s. 2, effective October 1, 2000, and applicable to returns filed on or after that date, added subdivision (10a).

Session Laws 2000-120, s. 7, effective January 1, 2001, rewrote subdivision (5a) to provide a penalty for misuse of an exemption certificate rather than misuse of a certificate of resale.

Session Laws 2000-140, s. 70, effective July 21, 2000, inserted "the" preceding "payer's income tax return" in subdivision (10)b.

§ 105-236.1. Enforcement of revenue laws by revenue law enforcement agents.

(a) General. — The Secretary may appoint employees of the Unauthorized Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter.

The Secretary may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

(1) The felony and misdemeanor tax violations in G.S. 105-236.

(2) The misdemeanor tax violations in G.S. 105-449.117 and G.S. 105-449.120.

(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes:

a. G.S. 14-91 (Embezzlement of State Property).

b. G.S. 14-92 (Embezzlement of Funds).

c. G.S. 14-100 (Obtaining Property By False Pretenses).

d. G.S. 14-119 (Forgery).

e. G.S. 14-120 (Uttering Forged Paper).

f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes).

(b) Authority. — A revenue law enforcement officer is a State officer with jurisdiction throughout the State within the officer's subject-matter jurisdiction. A revenue law enforcement officer may serve and execute notices, orders, warrants, or demands issued by the Secretary or the General Court of Justice in connection with the enforcement of the officer's subject-matter jurisdiction. A revenue law enforcement officer has the full powers of arrest as provided by G.S. 15A-401 while executing the notices, orders, warrants, or demands.

(c) Qualifications. — To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Chapter 17C of the General Statutes. The Secretary may administer the oath of office to revenue law enforcement officers appointed pursuant to this section. (1997-503, s. 1; 2000-119, s. 1.)

Effect of Amendments. — Session Laws 2000-119, s. 1, effective July 14, 2000, rewrote subsection (a) and added subsection (c).

§ 105-241.1. Additional taxes; assessment procedure.

Editor's Note. —
Session Laws 2000-140, s. 88, effective July 21, 2000, rewrites Session Laws 1999-360, s. 33, to read: "Part III of this act is effective for taxable years beginning on or after January 1, 2000. Sections 10 through 15 of Part III [which affected the head to Article 3B of Chapter 105 and §§ 105-129.16B, 105-129.17, 105-129.18, and 105-129.19] apply to buildings to which federal credits are allocated on or after January 1, 2000." Section 105-241.1 was amended by Session Laws 1999-360, s. 16, which was within Part III of the act.

Effect of Amendments. — Session Laws 1999-360, s. 16, effective for taxable years beginning on or after January 1, 2000, divided the former second paragraph of subsection (e) into the present second and third paragraph, and in the present third paragraph substituted "or tax benefit pursuant to forfeiture provisions of" for "pursuant to G.S. 105-163.014 or Article 3A of."

In light of the change by Session Laws 2000-140, s. 88, to the effective date and applicability language of Session Laws 1999-360, s. 33, the Effect of Amendments note for Session Laws 1999-360, s. 16 has been printed in the supplement.

§ 105-259. Secrecy required of officials; penalty for violation.

(a) Definitions. — The following definitions apply in this section:

(1) Employee or officer. — The term includes a former employee, a former officer, and a current or former member of a State board or commission.

(2) Tax information. — Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.

(b) Disclosure Prohibited. — An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) Review by a tax official of another jurisdiction to aid the jurisdiction in collecting a tax imposed by this State or the other jurisdiction if the

laws of the other jurisdiction allow it to provide similar tax information to a representative of this State.

(4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.

(5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.

(5a) Reserved.

(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 and G.S. 105-187.44 or under former G.S. 105-116 and G.S. 105-120.

(5c) To provide the following information to a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes on an annual basis, when the information is needed to enable the authority to administer its tax laws:

a. The name, address, and identification number of retailers who collect the tax on leased vehicles imposed by G.S. 105-187.5.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the tax on leased vehicles imposed by G.S. 105-187.5, when the Department determines that the audit results may be of interest to the authority.

(5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for the administration of its local tax on prepared food and beverages:

a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in the business of selling prepared food and beverages.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county or city in the administration of its local tax on prepared food and beverages.

(6) To sort, process, or deliver tax information on behalf of the Department of Revenue.

(6a) To furnish the county official designated under G.S. 105-164.14(f) a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105-164.14(f).

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation or the International Fuel Tax Association, Inc., when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.

(8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(9a) To furnish information to the Employment Security Commission to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The Employment Security Commission shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:

a. Name, social security number, spouse's name, spouse's social security number, and county of residence.
b. Filing status and federal personal exemptions.
c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.
d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.
e. Exemption for children, nonresidents' and part-year residents' exemption for children, and credit for children.
f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for child and dependent care expenses, other qualifying expenses, credit for other qualifying expenses, total credit for child and dependent care expenses.

(10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.
(11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.
(11a) To provide a copy of a return to the taxpayer who filed the return.
(11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.
(11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.
(12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.
(13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.
(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture and Consumer Services when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.
(15) To exchange information concerning a tax imposed by Articles 2A, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:

a. The North Carolina Alcoholic Beverage Control Commission.
b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.
d. Law enforcement agencies.
e. The Division of Adult Probation and Parole of the Department of Correction.

(16) To furnish to the Department of Secretary of State the name, address, tax year end, and account and identification numbers of a corporation liable for corporate income or franchise taxes or of a limited liability company liable for a corporate or a partnership tax return to enable the Secretary of State to notify the corporation or the limited liability company of the annual report filing requirement or that its articles of incorporation or articles of organization or its certificate of authority has been suspended.

(16a) To provide the North Carolina Self-Insurance Guaranty Association information on self-insurers' premiums as determined under G.S. 105-228.5(b), (b1), and (c) for the purpose of collecting the assessments authorized in G.S. 97-133(a).

(17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

(18) To furnish to the Office of the State Controller the name, address, and account and identification numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.

(19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(20) **(Repealed effective January 1, 2012)** To furnish to the Environmental Management Commission information concerning whether a person who is requesting certification of a dry-cleaning facility or wholesale distribution facility from the Commission is liable for privilege tax under Article 5D of this Chapter.

(21) To exchange information concerning the tax on piped natural gas imposed by Article 5E of this Chapter with the North Carolina Utilities Commission or the Public Staff of that Commission.

(22) To provide the Secretary of Administration pursuant to G.S. 143-59.1 a list of vendors and their affiliates who meet one or more of the conditions of G.S. 105-164.8(b) but refuse to collect the use tax levied under Article 5 of this Chapter on their sales delivered to North Carolina.

(23) To provide public access to a database containing the names and account numbers of taxpayers who are not required to pay sales and use taxes under Article 5 of this Chapter to a retailer because of an exemption or because they are authorized to pay the tax directly to the Department of Revenue.

(24) To furnish the Department of Commerce and the Employment Security Commission a copy of the qualifying information required in G.S. 105-129.7(b).

(25) To provide public access to a database containing the names of retailers who are registered to collect sales and use taxes under Article 5 of this Chapter.

(c) Punishment. — A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1939, c. 158, s. 928; 1951, c. 190, s. 2; 1973, c. 476, s. 193; c. 903, s. 4; c. 1287, s. 13; 1975, c. 19, s. 29; c. 275, s. 7; 1977, c. 657, s. 6; 1979, c. 495; 1983, c. 7; 1983 (Reg. Sess., 1984), c. 1004, s. 3; c. 1034, s. 125; 1987, c. 440, s. 4; 1989, c. 628; c. 728, s. 1.47; 1989 (Reg. Sess., 1990), c. 945, s. 15; 1993, c. 485, s. 31; c. 539, s. 712; 1994, Ex. Sess., c. 14, s. 51; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 679, s. 8.4; 1995, c. 17, s. 11; c. 21, s. 2; 1997-118, s. 6; 1997-261, s. 14; 1997-340, s. 2; 1997-392, s. 4.1; 1997-475, s. 6.11; 1998-22, ss. 10, 11; 1998-98, ss. 13.1(b), 20; 1998-139, s. 1; 1998-212, s. 12.27A(o); 1999-219, s. 7.1; 1999-340, s. 8; 1999-341, s. 8; 1999-360, s. 2.1; 1999-438, s. 18; 1999-452, s. 28.1; 2000-120, s. 8; 2000-173, s. 11.)

Editor's Note. — Session Laws 1997-392, s. 8 provides in part that s. 4.1 of Session Laws 1997-392, which added subdivision (b)(20) of this section, is repealed effective January 1, 2012.

Session Laws 1997-392, s. 5, as amended by Session Laws 2000-19, s. 17, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until 30 June 2001."

Session Laws 2000-19, s. 20 is a severability clause.

Effect of Amendments. —

Session Laws 2000-120, s. 8, effective July 14, 2000, added subdivision (b)(25).

Session Laws 2000-173, s. 11, effective August 2, 2000, added subdivision (b)(15)e.

§ 105-262. Rules.

(a) The Secretary of Revenue may adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. The Tax Review Board shall review a new rule or a change to a rule before it is filed in the North Carolina Administrative Code.

(b) The Secretary must ask the Office of State Budget, Planning, and Management to prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Secretary shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared. (1939, c. 158, s. 931; 1955, c. 1350, s. 2; 1973, c. 476, s. 193; 1981, c. 859, s. 80; c. 1127, s. 53; 1991, c. 45, s. 28; c. 477, s. 7; 1995, c. 507, s. 27.8(p); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, in subsection (b), substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

§ 105-267. Taxes to be paid; suits for recovery of taxes.

CASE NOTES

Cited in Milligan v. North Carolina, 135 N.C. App. 781, 522 S.E.2d 330 (1999); Chrysler Fin. Co. v. Offerman, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 605 (June 6, 2000).

§ 105-269.13. Debts not collectible under North Carolina law.

(a) Debts Not Collectible. — The following debts are not collectible and are not subject to execution under Article 28 of Chapter 1 of the General Statutes or any other provision of law:

(1) A loan made by a person who does not comply with G.S. 105-88.

(2) A debt owed to a retailer described in subsection (b) of this section as the result of the purchase of tangible personal property.

(b) Retailer. — A debt owed to a retailer is subject to this section if all of the following applies to the retailer:

(1) The retailer meets one or more of the conditions in G.S. 105-164.8(b).

(2) The retailer is not registered to collect the use tax due under Article 5 of this Chapter on its sales delivered to an address in North Carolina.

(3) The retailer reported gross sales of at least five million dollars ($5,000,000) on its most recent federal income tax return.

(c) Assignment. — An assignment to a person of a debt listed in subsection (a) of this section is subject to the collection restrictions imposed by this section. (2000-120, s. 9.)

Editor's Note. — Session Laws 2000-120, s. 18, made this section effective July 14, 2000.

§ 105-269.14. (Repealed effective for taxable years beginning on or after January 1, 2003) Payment of use tax with individual income tax.

Section Repealed Effective for taxable years beginning on or after January 1, 2003 — This section is repealed, effective for taxable years beginning on or after January 1, 2003, by Session Laws 2000-120, s. 10.

Editor's Note. —

Session Laws 1999-341, ss. 3 to 6, as amended by Session Laws 2000-120, ss. 16 and 17, provide that the Secretary of Revenue may draw up to $150,000 for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14 to pay for the costs of programming, form revision, and resources for taxpayer assistance to implement ss. 1 and 2 of Session Laws 1999-341. During the 1999-2000 fiscal year, the Secretary of Revenue is to implement a program to allow those taxpayers required under G.S. 105-164.16 to report and pay sales and use taxes on a semimonthly basis to file the semimonthly return electronically. To pay for this program, the Secretary is authorized to draw up to $500,000 for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14. For the 2000-2001 fiscal year the Secretary may retain costs of implementing the section from amounts collected pursuant to contracts authorized by the section. The Secretary is to report annually to the Revenue Laws Study Committee on its collections during the biennium. The Department of Revenue is directed to conduct a study to identify and evaluate proposals for more efficient collection of taxes, and the State Controller is to cooperate with the Department of Revenue in this study. The Department is to report the results of its study, including findings, recommendations, and estimated revenue gains of each recommendation, to the Revenue Laws Study Committee by May 1, 2000. The Secretary of Revenue is authorized to draw up to $50,000 for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14. To implement the recommendations of the study, the Secretary may enter into a performance-based contract and may withhold from the revenue collected the amount needed to obtain assistance in developing a request for proposal for the performance-based contract.

SUBCHAPTER II. LISTING, APPRAISAL, AND ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES ON PROPERTY.

Article 12.

Property Subject to Taxation.

§ 105-274. Property subject to taxation.

CASE NOTES

Educational Exemption Upheld. — A seminary met its burden of proving that three parcels of its property were entitled to an exemption under § 105-278.4, although the land in question was undeveloped, the future planned use might not be exempt, and the seminary had sold some timber from the land to maintain a healthy forested state, to remove trees damaged by a hurricane, and to pay for other repairs caused by that hurricane. In re Southeastern Baptist Theological Seminary, Inc., 135 N.C. App. 247, 520 S.E.2d 302 (1999).

§ 105-275. Property classified and excluded from the tax base.

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

(1) Repealed by Session Laws 1987, c. 813, s. 5.

(2) Tangible personal property that has been imported from a foreign country through a North Carolina seaport terminal and which is stored at such a terminal while awaiting further shipment for the first 12 months of such storage. (The purpose of this classification is to encourage the development of the ports of this State.)

(3) Real and personal property owned by nonprofit water or nonprofit sewer associations or corporations.

(4) Repealed by Session Laws 1987, c. 813, s. 5.

(5) Vehicles that the United States government gives to veterans on account of disabilities they suffered in World War II, the Korean Conflict, or the Vietnam Era so long as they are owned by:

a. A person to whom a vehicle has been given by the United States government or

b. Another person who is entitled to receive such a gift under Title 38, section 252, United States Code Annotated.

(5a) A motor vehicle owned by a disabled veteran that is altered with special equipment to accommodate a service-connected disability. As used in this section, disabled veteran means a person as defined in 38 U.S.C. § 101(2) who is entitled to special automotive equipment for a service-connected disability, as provided in 38 U.S.C. § 3901.

(6) Special nuclear materials held for or in the process of manufacture, processing, or delivery by the manufacturer or processor thereof, regardless whether the manufacturer or processor owns the special nuclear materials. The terms "manufacture" and "processing" do not include the use of special nuclear materials as fuel. The term "special nuclear materials" includes (i) uranium 233, uranium enriched in the isotope 233 or in the isotope 235; and (ii) any material artificially

enriched by any of the foregoing, but not including source material. "Source material" means any material except special nuclear material which contains by weight one twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Provided however, that to qualify for this exemption no such nuclear materials shall be discharged into any river, creek or stream in North Carolina. The classification and exclusion provided for herein shall be denied to any manufacturer, fabricator or processor who permits burial of such material in North Carolina or who permits the discharge of such nuclear materials into the air or into any river, creek or stream in North Carolina if such discharge would contravene in any way the applicable health and safety standards established and enforced by the Department of Environment and Natural Resources or the Nuclear Regulatory Commission. The most stringent of these standards shall govern.

(7) Real and personal property that is:

a. Owned either by a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes or by a bona fide charitable organization, and either operated by such owning organization or leased to another such nonprofit corporation or charitable organization, and

b. Appropriated exclusively for public parks and drives.

(8)a. Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water (including, but not limited to, waste lagoons and facilities owned by public or private utilities built and installed primarily for the purpose of providing sewer service to areas that are predominantly residential in character or areas that lie outside territory already having sewer service), if the Department of Environment and Natural Resources or a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 furnishes a certificate to the tax supervisor of the county in which the property is situated or to be situated stating that the Environmental Management Commission or local air pollution control program has found that the described property:

1. Has been or will be constructed or installed;
2. Complies with or that plans therefor which have been submitted to the Environmental Management Commission or local air pollution control program indicate that it will comply with the requirements of the Environmental Management Commission or local air pollution control program;
3. Is being effectively operated or will, when completed, be required to operate in accordance with the terms and conditions of the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program; and
4. Has or, when completed, will have as its primary rather than incidental purpose the reduction of water pollution resulting from the discharge of sewage and waste or the reduction of air pollution resulting from the emission of air contaminants.

b. Real or personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as its primary purpose recycling or resource recovering of or from solid waste.

c. Tangible personal property that is used exclusively, or if being installed, is to be used exclusively, for the prevention or reduction of cotton dust inside a textile plant for the protection of the health of the employees of the plant, in accordance with occupational safety and health standards adopted by the State of North Carolina pursuant to Article 16 of G.S. Chapter 95. The Department of Revenue shall adopt guidelines to assist the tax supervisors in administering this exclusion.

d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste.

(9) through (11) Repealed by Session Laws 1987, c. 813, s. 5.

(12) Real property owned by a nonprofit corporation or association exclusively held and used by its owner for educational and scientific purposes as a protected natural area. (For purposes of this subdivision, the term "protected natural area" means a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study.)

(13) Repealed by Session Laws 1973, c. 904.

(14) Motor vehicles chassis belonging to nonresidents, which chassis temporarily enters the State for the purpose of having a body mounted thereon.

(15) Upon the date on which each county's next general reappraisal of real property under the provisions of G.S. 105-286(a) becomes effective, standing timber, pulpwood, seedlings, saplings, and other forest growth. (The purpose of this classification is to encourage proper forest management practices and to develop and maintain the forest resources of the State.)

(16) Non-business Property. — As used in this subdivision, the term "non-business property" means personal property that is used by the owner of the property for a purpose other than the production of income and is not used in connection with a business. The term includes household furnishings, clothing, pets, lawn tools, and lawn equipment. The term does not include motor vehicles, mobile homes, aircraft, watercraft, or engines for watercraft.

(17) Real and personal property belonging to the American Legion, Veterans of Foreign Wars, Disabled American Veterans, or to any

similar veterans organizations chartered by the Congress of the United States or organized and operated on a statewide or nationwide basis, and any post or local organization thereof, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient and normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

(18) Real and personal property belonging to the Grand Lodge of Ancient, Free and Accepted Masons of North Carolina, the Prince Hall Masonic Grand Lodge of North Carolina, their subordinate lodges and appendant bodies including the Ancient and Arabic Order Nobles of the Mystic Shrine, and the Ancient Egyptian Order Nobles of the Mystic Shrine, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

(19) Real and personal property belonging to the Loyal Order of Moose, the Benevolent and Protective Order of Elks, the Knights of Pythias, the Odd Fellows, the Woodmen of the World, and similar fraternal or civic orders and organizations operated for nonprofit benevolent, patriotic, historical, charitable, or civic purposes, when used exclusively for meeting or lodge purposes by the organization, together with as much additional adjacent real property as may be necessary for the convenient normal use of the buildings. Notwithstanding the exclusive-use requirement of this subdivision, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed, or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed, or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section. Nothing in this subdivision shall be construed so as to include social fraternities, sororities, and similar college, university, or high school organizations in the classification for exclusion from ad valorem taxes.

(20) Real and personal property belonging to Goodwill Industries and other charitable organizations organized for the training and rehabil-

itation of disabled persons when used exclusively for training and rehabilitation, including commercial activities directly related to such training and rehabilitation.

(21) The first thirty-eight thousand dollars ($38,000) in assessed value of housing together with the necessary land therefor, owned and used as a residence by a disabled veteran who receives benefits under 38 U.S.C. § 2101. This exclusion shall be the total amount of the exclusion applicable to such property.

(22) Repealed by Session Laws 1987, c. 813, s. 5.

(23) Tangible personal property imported from outside the United States and held in a Foreign Trade Zone for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing or display and tangible personal property produced in the United States and held in a Foreign Trade Zone for exportation, either in its original form or as altered by any of the above processes.

(24) Cargo containers and container chassis used for the transportation of cargo by vessels in ocean commerce.

The term "container" applies to those nondisposable receptacles of a permanent character and strong enough for repeated use and specially designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by ocean vessels, without intermediate reloadings and fitted with devices permitting its ready handling particularly in the transfer from one transport mode to another.

(24a) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2001)** Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms "interstate air courier" and "hub" have the meanings provided in G.S. 105-164.3.

(25) Tangible personal property shipped into this State for the purpose of repair, alteration, maintenance or servicing and reshipment to the owner outside this State.

(26) For the tax year immediately following transfer of title, tangible personal property manufactured in this State for the account of a nonresident customer and held by the manufacturer for shipment. For the purpose of this subdivision, the term "nonresident" means a taxpayer having no place of business in North Carolina.

(27), (28) Repealed by Session Laws 1983, c. 643, s. 1.

(29) Real property and easements wholly and exclusively held and used for nonprofit historic preservation purposes by a nonprofit historical association or institution, including real property owned by a nonprofit corporation organized for historic preservation purposes and held by its owner exclusively for sale under an historic preservation agreement prepared and recorded under the provisions of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes of North Carolina.

(29a) Land within an historic district held, by a nonprofit corporation organized for historic preservation purposes, for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes and shall be payable five years from the fiscal year the exclusion is first claimed unless an historic structure is moved onto the site during that time. If an historic structure has not been moved to the site within five years, then deferred taxes for the preceding five fiscal years shall immediately be payable, together with interest as provided in G.S. 105-360 for unpaid taxes that shall accrue on the deferred taxes as if they had been payable on the dates on which they would originally become due. All liens arising under this subdivision are extinguished upon either the payment of any deferred taxes under this subdivision or the location of an historic structure on the site within the five-year period allowed under this subdivision.

(30) Repealed by Session Laws 1987, c. 813, s. 5.

(31) Intangible personal property other than leasehold interests in exempted real property. This subdivision does not affect the taxation of software not otherwise excluded by subdivision (40) of this section.

(31a) through (31d) Repealed by Session Laws 1997-23, s. 3.

(32) **(See editor's note)** Recodified as § 105-278.6A by Session Laws 1998-212, s. 29A.18(a), effective for taxes imposed for taxable years beginning on or after July 1, 1998.

(32a) Inventories owned by contractors.

(33) Inventories owned by manufacturers.

(34) Inventories owned by retail and wholesale merchants.

(35) Severable development rights, as defined in G.S. 136-66.11(a), when severed and evidenced by a deed recorded in the office of the register of deeds pursuant to G.S. 136-66.11(c).

(36) Real and personal property belonging to the North Carolina Low-Level Radioactive Waste Management Authority created under Chapter 104G of the General Statutes.

(37) Poultry and livestock and feed used in the production of poultry and livestock.

(38) Real and personal property belonging to the North Carolina Hazardous Waste Management Commission created under Chapter 130B of the General Statutes.

(39) Real and personal property that is: (i) owned by a nonprofit corporation organized upon the request of a local government unit for the sole purpose of financing projects for public use, (ii) leased to a unit of local government whose property is exempt from taxation under G.S. 105-278.1, and (iii) used in whole or in part for a public purpose by such unit of local government. If only part of the property is used for a public purpose, only that part is exempt from the tax. This subdivision shall not apply if any distributions are made to members, officers, or directors of the nonprofit corporation.

(40) Computer software and any documentation related to the computer software. As used in this subdivision, the term "computer software" means any program or routine used to cause a computer to perform a specific task or set of tasks. The term includes system and application programs and database storage and management programs.

The exclusion established by this subdivision does not apply to computer software and its related documentation if the computer software meets one or more of the following descriptions:

a. It is embedded software. "Embedded software" means computer instructions, known as microcode, that reside permanently in the internal memory of a computer system or other equipment and are not intended to be removed without terminating the operation of the computer system or equipment and removing a computer chip, a circuit, or another mechanical device.

b. It is purchased or licensed from a person who is unrelated to the taxpayer and it is capitalized on the books of the taxpayer in accordance with generally accepted accounting principles, including financial accounting standards issued by the Financial Accounting Standards Board. A person is unrelated to a taxpayer if (i) the taxpayer and the person are not subject to any common ownership, either directly or indirectly, and (ii) neither the taxpayer nor the person has any ownership interest, either directly or indirectly, in the other.

This subdivision does not affect the value or taxable status of any property that is otherwise subject to taxation under this Subchapter.

The provisions of the exclusion established by this subdivision are not severable. If any provision of this subdivision or its application is held invalid, the entire subdivision is repealed.

(41) Objects of art held by the North Carolina Art Society, Incorporated.

(42) A vehicle that is offered at retail for short-term lease or rental and is owned or leased by an entity engaged in the business of leasing or renting vehicles to the general public for short-term lease or rental. For the purposes of this subdivision, the term "short-term lease or rental" shall have the same meaning as in G.S. 105-187.1, and the term "vehicle" shall have the same meaning as in G.S. 153A-156(e) and G.S. 160A-215.1(e). A gross receipts tax as set forth by G.S. 153A-156 and G.S. 160A-215.1 is substituted for and replaces the ad valorem tax previously levied on these vehicles. (1939, c. 310, s. 303; 1961, c. 1169, s. 8; 1967, c. 1185; 1971, c. 806, s. 1; c. 1121, s. 3; 1973, cc. 290, 451; c. 476, s. 128; c. 484; c. 695, s. 1; c. 790, s. 1; cc. 904, 962, 1028, 1034, 1077; c. 1262, s. 23; c. 1264, s. 1; 1975, cc. 566, 755; c. 764, s. 6; 1977, c. 771, s. 4; c. 782, s. 2; c. 1001, ss. 1, 2; 1977, 2nd Sess., c. 1200, s. 4; 1979, c. 200, s. 1; 1979, 2nd Sess., c. 1092; 1981, c. 86, s. 1; 1981 (Reg. Sess., 1982), c. 1244, ss. 1, 2; 1983, c. 643, ss. 1, 2; c. 693; 1983 (Reg. Sess., 1984), c. 1060; 1985, c. 510, s. 1; c. 656, s. 37; 1985 (Reg. Sess., 1986), c. 982, s. 18; 1987, c. 356; c. 622, s. 2; c. 747, s. 8; c. 777, s. 6; c. 813, ss. 5, 6, 22; c. 850, s. 17; 1987 (Reg. Sess., 1988), c. 1041, s. 1.1; 1989, c. 148, s. 4; c. 168, s. 6; c. 705; c. 723, s. 1; c. 727, ss. 28, 29; 1991, c. 717, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 2; 1993, c. 459, s. 2; 1993 (Reg. Sess., 1994), c. 745, s. 39; 1995, c. 41, s. 2; c. 509, s. 51; 1995 (Reg. Sess., 1996), c. 646, s. 12; 1997-23, ss. 1, 3, 9; 1997-443, s. 11A.119(a); 1997-456, s. 27; 1998-55, ss. 10, 18; 1998-212, s. 29A.18(a); 1999-337, s. 35(a); 2000-2, s. 1; 2000-18, s. 1, 2000-140, ss. 71, 72(a).)

Editor's Note. — Session Laws 1998-212, s. 29A.18(e), as amended by Session Laws 2000-20, s. 2, provides in part that s. 29A.18(a) of the act, which recodified subdivision (32) of this section as § 105-278.6A and provided for its delayed repeal, is effective for taxes imposed for taxable years beginning on or after July 1, 1998. Section 105-278.6A is repealed effective for taxes imposed after taxable years beginning on or after July 1, 2001.

Session Laws 2000-2, s. 4, directs the Fiscal Research Division of the General Assembly to compare the revenue generated statewide by the susbstitute and replacement gross receipts tax authorized by the act with the revenue that would have been generated by an ad valorem tax and to report its findings to the 2003 Session of the 2003-2004 General Assembly.

Effect of Amendments. —

Session Laws 2000-2, s. 1, effective for taxes imposed for taxable years beginning on or after July 1, 2000, added present subdivision (42).

Session Laws 2000-18, s. 1, effective for taxes imposed for taxable years beginning on or after July 1, 2000, added subdivision (5a).

Session Laws 2000-140, ss. 71 and 72(a), effective July 21, 2000, rewrote subdivision (40); redesignated the subdivision added by

Session Laws 2000-2, s. 1, as present subdivision (42); and inserted "and the term 'vehicle' shall have the same meaning as in G.S. 153A-156(e) and G.S. 160A-215.1(e)" in present subdivision (42).

§ 105-277.2. Agricultural, horticultural, and forestland — Definitions.

CASE NOTES

Taxpayer Had Standing to Appeal to County. — Where taxpayer complained that the property of a real estate corporation was undervalued, with the result that other property owners in the county would bear a disproportionate share of the tax burden, taxpayer was adversely affected by the alleged undervaluation of the corporation's property and had standing to appeal to the county for a revaluation of the corporate property. North Carolina Property Tax Comm'n, — N.C. App. —, 525 S.E.2d 196, 2000 N.C. App. LEXIS 64 (2000), cert. denied, 351 N.C. 473, — S.E.2d — (2000).

Corporation Not Growing Trees Under a "Sound Management Program." — The Commission's findings of fact were supported by competent, material, and substantial evidence that the property of the family corporation was not actively engaged in the commercial growing of trees under a sound management program, and therefore, not eligible for taxation at present-use value. North Carolina Property Tax Comm'n, — N.C. App. —, 525 S.E.2d 196, 2000 N.C. App. LEXIS 64 (2000), cert. denied, 351 N.C. 473, — S.E.2d — (2000).

§ 105-277.13. (Effective for taxes imposed for taxable years beginning on or after July 1, 2001) Taxation of improvements on brownfields.

(a) Qualifying improvements on brownfields properties are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed, and taxed in accordance with this section. An owner of land is entitled to the partial exclusion provided by this section for the first five taxable years beginning after completion of qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. After property has qualified for the exclusion provided by this section, the assessor for the county in which the property is located shall annually appraise the improvements made to the property during the period of time that the owner is entitled to the exclusion.

(b) For the purposes of this section, the terms "qualifying improvements on brownfields properties" and "qualifying improvements" mean improvements made to real property that is subject to a brownfields agreement entered into by the Department of Environment and Natural Resources and the owner pursuant to G.S. 130A-310.32.

(c) The following table establishes the percentage of the appraised value of the qualified improvements that is excluded based on the taxable year:

Year	Percent of Appraised Value Excluded
Year 1	90%
Year 2	75%
Year 3	50%
Year 4	30%
Year 5	10%.

(2000-158, s. 1.)

Editor's Note. — Session Laws 2000-158, s. 3, made this section effective for taxes imposed for taxable years beginning on or after July 1, 2001.

§ 105-278.4. Real and personal property used for educational purposes.

CASE NOTES

Constitutionality. — The court upheld this section in spite of a challenge on the constitutional grounds that it applied unequally to various property tracts and violated the rule of uniformity; the four requirements of the section were reasonably objective and did not result in any hostile or systematic discrimination and, further, the exemption requirements were sufficiently enumerated. In re Southeastern Baptist Theological Seminary, Inc., 135 N.C. App. 247, 520 S.E.2d 302 (1999).

Exemption Upheld. — A seminary met its burden of proving that three parcels of its property were entitled to an exemption under this section, although the land in question was undeveloped, the future planned use might not be exempt, and the seminary had sold some timber from the land to maintain a healthy forested state, to remove trees damaged by a hurricane, and to pay for other repairs caused by that hurricane. In re Southeastern Baptist Theological Seminary, Inc., 135 N.C. App. 247, 520 S.E.2d 302 (1999).

§ 105-278.6A. (See editor's note for repeal date) Qualified retirement facility.

Editor's Note. —

Session Laws 1998-212, s. 29A.18(e), as amended by Session Laws 2000-20, s. 2, provides in part that s. 29A.18(a) of the act, which recodified subdivision (32) of § 105-275 as § 105-278.6A, is effective for taxes imposed for taxable years beginning on or after July 1, 1998, and further provides that § 105-278.6A is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2001.

§ 105-282.1. Applications for property tax exemption or exclusion.

(a) Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled thereto. Except as provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

(1) The United States government, the State of North Carolina and the counties and municipalities of the State are exempted from the requirement that owners file applications for exemption.

(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (32a), (33), (34), (40), or (42) or exempted under G.S. 105-278.2 are not required to file applications for the exclusion or exemption of that property.

(3) After an owner of property entitled to exemption under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), (7), (8), (12), (17) through (19), (21) or (39), G.S. 105-277.1, or G.S. 105-278 has applied for exemption or exclusion and the exemption or exclusion has been approved, the owner is not

required to file an application in subsequent years except in the following circumstances:

a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property; or

b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion.

(4) After an owner of property entitled to exclusion under G.S. 105-277.10 has applied for the exclusion and the exclusion has been approved, the owner is not required to apply for the exclusion in subsequent years so long as the classified property, including classified property acquired after the application is approved, is used or held for use directly in manufacturing or processing as part of industrial machinery.

(5) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.

(b) The Department of Revenue or the assessor to whom an application for exemption or exclusion is submitted shall review the application and either approve or deny the application. Approved applications shall be filed and made available to all taxing units in which the exempted or excluded property is situated. If the Department denies an application for exemption or exclusion, it shall notify the taxpayer, who may appeal the denial to the Property Tax Commission.

If an assessor denies an application for exemption or exclusion, he shall notify the owner of his decision in time for him to appeal to the board of equalization and review and from the county board to the Property Tax Commission. If the notice of denial covers property located within a municipality, the assessor shall send a copy of the notice and a copy of the application to the governing body of the municipality. The municipal governing body shall then advise the owner whether it will adopt the decision of the county board or require the owner to file a separate appeal with the municipal governing body. In the event the owner is required to appeal to the municipal governing body and that body renders an adverse decision, the owner may appeal to the Property Tax Commission. Nothing in this section shall prevent the governing body of a municipality from denying an application which has been approved by the assessor or by the county board provided the owner's rights to notice and hearing are not abridged. Applications handled separately by a municipality shall be filed in the office of the person designated by the governing body, or in the absence of such designation, in the office of the chief fiscal officer of the municipality.

(c) When an owner of property that may be eligible for exemption or exclusion neither lists the property nor files an application for exemption or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, upon appeal, the owner demonstrates that the property meets the conditions for exemption or exclusion, the body hearing the appeal may approve the exemption or exclusion. Discovery of the property by the Department or the county shall automatically constitute a discovery by any taxing unit in which the property has a taxable situs.

(d) The county assessor shall prepare and maintain a roster of all property in the county that is granted tax relief through classification or exemption. As to affected real and personal property, the roster shall set forth:

(1) The name of the owner of the property.
(2) A brief description of the property.
(3) A statement of the use to which the property is put.
(4) A statement of the value of the property.
(5) The total value of exempt property in the county and in each municipality therein.

(e) A duplicate copy of the roster shall be forwarded to the Department of Revenue on or before November 1, 1974. In subsequent years, on or before November 1, a report shall be filed with the Department of Revenue showing all changes since the last report. (1973, c. 695, s. 8; c. 1252; 1981, c. 54, ss. 2, 3; c. 86, s. 2; c. 915; 1985 (Reg. Sess., 1986), c. 982, s. 22; 1987, c. 45, s. 1; c. 295, ss. 5, 6; c. 680, ss. 1-3; c. 813, s. 13; 1989, c. 674, s. 2; c. 723, s. 2; 1991, c. 34, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 3; 1993, c. 459, s. 3; 1995, c. 41, s. 7; 1995 (Reg. Sess., 1996), c. 646, s. 16; 1997-23, s. 4; 2000-140, s. 72(b).)

Editor's Note. —
Session Laws 1998-212, s. 29A.18(e), as amended by Session Laws 2000-20, s. 2, provides in part that notwithstanding subsection (a) of this section, an application for the benefit provided in 105-278.6A for the 1998-99 tax year is timely if it is filed on or before November 15, 1998.

Effect of Amendments. —
Session Laws 2000-140, s. 72(b), effective July 21, 2000, inserted "or (42)" in subdivision (a)(2) and deleted "or" preceding "(40)."

Article 13.

Standards for Appraisal and Assessment.

§ 105-283. Uniform appraisal standards.

CASE NOTES

Use of Sales Price. —
Where sale was not between a willing buyer and a willing seller, as contemplated by this section, sales price was not indicative of property's true value. In re Phoenix Ltd. Partnership, 134 N.C. App. 474, 517 S.E.2d 903 (1999).

Quoted in In re Allred, 351 N.C. 1, 519 S.E.2d 52 (1999).

§ 105-284. Uniform assessment standard.

CASE NOTES

Stated in In re Allred, 351 N.C. 1, 519 S.E.2d 52 (1999).

Article 14.

Time for Listing and Appraising Property for Taxation.

§ 105-286. Time for general reappraisal of real property.

CASE NOTES

A post-octennial valuation sale is not a statutorily permissive basis for adjusting a property's tax valuation. In re Allred, 351 N.C. 1, 519 S.E.2d 52 (1999).

§ 105-287. Changing appraised value of real property in years in which general reappraisal or horizontal adjustment is not made.

CASE NOTES

A post-octennial valuation sale is not a statutorily permissive basis for adjusting a property's tax valuation. In re Allred, 351 N.C. 1, 519 S.E.2d 52 (1999).

State Tax Commission's reliance upon an independent appraiser's collateral determination of petitioners' property value, without challenge or correlation to the county's schedules of value or the application of those schedules to the property, was in violation of the statutory requirement of this section that any permissible increase or decrease in the appraised value of real property be calculated using the schedules and standards established by the county. In re Allred, 351 N.C. 1, 519 S.E.2d 52 (1999).

No Revaluation After Transfer. — The Property Tax Commission was without statutory authority to revalue a piece of land after the owners/tax payers gave a part of it to a third party. Although the division of the 1.91 acre tract into two tracts and the conveyance of one of the tracts "directly affected" the property, the division and transfer was within the sole authority of the taxpayers and, therefore, not a "factor" within the meaning of this section. In re Corbett, — N.C. App. —, 530 S.E.2d 90, 2000 N.C. App. LEXIS 617 (2000).

Article 15.

Duties of Department and Property Tax Commission as to Assessments.

§ 105-288. Property Tax Commission.

(a) Creation and Membership. — The Property Tax Commission is created. It consists of five members, three of whom are appointed by the Governor and two of whom are appointed by the General Assembly. Of the two appointments by the General Assembly, one shall be made upon the recommendation of the Speaker of the House of Representatives and the other shall be made upon the recommendation of the President Pro Tempore of the Senate. The terms of the members appointed by the Governor and of the member appointed upon the recommendation of the President Pro Tempore of the Senate are for four years. Of the members appointed for four-year terms, two expire on June 30 of each odd-numbered year. The term of the member appointed upon the recommendation of the Speaker of the House of Representatives is for two years and it expires on June 30 of each odd-numbered year. The General Assembly shall make its appointments in accordance with G.S. 120-121 and shall fill a vacancy in accordance with G.S. 120-122. A vacancy occurs on the Commission when a member resigns, is removed, or dies. The person appointed to fill a vacancy shall serve for the balance of the unexpired term. The Governor may remove any member for misfeasance, malfeasance, or nonfeasance.

The Commission shall have a chair and a vice-chair. The Governor shall designate one of the Commission members as the chair, to serve at the pleasure of the Governor. The members of the Commission shall elect a vice-chair from among its membership. The vice-chair serves until the member's regularly appointed term expires.

(b) Duties. — The Property Tax Commission constitutes the State Board of Equalization and Review for the valuation and taxation of property in the State. It shall hear appeals from the appraisal and assessment of the property of public service companies as defined in G.S. 105-333. The Commission may adopt rules needed to fulfill its duties.

(c) Oath. — Each member of the Property Tax Commission, as the appointed holder of an office, shall take the oath required by Article VI, § 7 of the North

Carolina Constitution with the following phrase added to it: "that I will not allow my actions as a member of the Property Tax Commission to be influenced by personal or political friendships or obligations,".

(d) Expenses. — The members of the Property Tax Commission shall receive travel and subsistence expenses in accordance with G.S. 138-5 and a salary of two hundred dollars ($200.00) a day when hearing cases, meeting to decide cases, and attending training or continuing education classes on property taxes or judicial procedure. The Secretary of Revenue shall supply all the clerical and other services required by the Commission. All expenses of the Commission and the Department of Revenue in performing the duties enumerated in this Article shall be paid as provided in G.S. 105-501.

(e) Meetings. — The Property Tax Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the Chair or upon the written request of at least three members. At least 15 days' notice shall be given to each member with respect to each special meeting. A majority of the Commission members constitutes a quorum for the transaction of business. (1939, c. 310, ss. 200, 201; 1941, c. 327, s. 6; 1947, c. 184; 1961, c. 547, s. 1; 1967, c. 1196, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1991, c. 110, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 20; c. 1016, s. 2; 1995, c. 41, s. 5; 2000-67, s. 7.11.)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7.11, effective July 1, 2000, substituted "cases, meeting to decide cases, and attending training or continuing education classes on property taxes or judicial procedure" in subsection (d).

§ 105-290. Appeals to Property Tax Commission.

CASE NOTES

Limits on Commission's Powers. — State Property Tax Commission's authority to issue an order reducing, increasing or confirming the valuation or valuations appealed, or listing or removing from the tax lists the property which has been appealed, is subject to the same statutory parameters as assessors, county boards and county commissioners. In re Allred, 351 N.C. 1, 519 S.E.2d 52 (1999).

Article 19.

Administration of Real and Personal Property Appraisal.

§ 105-317. Appraisal of real property; adoption of schedules, standards, and rules.

CASE NOTES

Bankruptcy Stigma as Appraisal Factor. — Taxpayer's contention that expert witness ignored the impact of bankruptcy stigma in valuing a property held without merit. In re Phoenix Ltd. Partnership, 134 N.C. App. 474, 517 S.E.2d 903 (1999).

ARTICLE 21.

Review and Appeals of Listings and Valuations.

§ 105-322. County board of equalization and review.

Local Modification. — Cabarrus: 2000-92, s. 1; Lincoln: 2000-40. For additional local modifications to this section, see the main volume.

CASE NOTES

Limits on Commission's Powers. — State Property Tax Commission's authority to issue an order reducing, increasing or confirming the valuation or valuations appealed, or listing or removing from the tax lists the property which has been appealed, is subject to the same statutory parameters as assessors, county boards and county commissioners. In re Allred, 351 N.C. 1, 519 S.E.2d 52 (1999).

Standing to Appeal. — Where taxpayer complained that the property of a real estate corporation was undervalued, with the result that other property owners in the county would bear a disproportionate share of the tax burden, taxpayer was adversely affected by the alleged undervaluation of the corporation's property and had standing to appeal to the county for a revaluation of the corporate property. North Carolina Property Tax Comm'n, — N.C. App. —, 525 S.E.2d 196, 2000 N.C. App. LEXIS 64 (2000), cert. denied, 351 N.C. 473, — S.E.2d — (2000).

ARTICLE 22.

Listing, Appraising, and Assessing by Cities and Towns.

§ 105-327. Appraisal and assessment of property subject to city and town taxation.

CASE NOTES

Cited in North Carolina Property Tax Comm'n, — N.C. App. —, 525 S.E.2d 196, 2000 N.C. App. LEXIS 64 (2000), cert. denied, 351 N.C. 473, — S.E.2d — (2000).

ARTICLE 22A.

Motor Vehicles.

§ 105-330.1. Classification of motor vehicles.

(a) Classification. — All motor vehicles other than the motor vehicles listed in subsection (b) of this section are designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Classified motor vehicles shall be listed and assessed as provided in this Article and taxes on classified motor vehicles shall be collected as provided in this Article.

(b) Exceptions. — The following motor vehicles are not classified under subsection (a) of this section:

(1) Motor vehicles exempt from registration pursuant to G.S. 20-51.
(2) Manufactured homes, mobile classrooms, and mobile offices.
(3) Semitrailers or trailers registered on a multiyear basis.
(4) Motor vehicles owned or leased by a public service company and appraised under G.S. 105-335.

(5) Repealed by Session Laws 2000, c. 140, s. 75(a), effective July 1, 2000. (1991, c. 624, s. 1; 1991 (Reg. Sess., 1992), c. 961, s. 3; 1993, c. 485, s. 18; c. 543, s. 4; 1993 (Reg. Sess., 1994), c. 745, s. 1; 2000-140, s. 75(a).)

Effect of Amendments. — Session Laws 2000-140, s. 75(a), effective July 1, 2000, repealed subdivision (b)(5), which read "'U-drive-it' passenger vehicles registered under G.S. 20-87(2)."

Article 24.

Review and Enforcement of Orders.

§ 105-345.2. Record on appeal; extent of review.

CASE NOTES

The Commission's findings of fact were supported by competent, material, and substantial evidence that the property of the family corporation was not actively engaged in the commercial growing of trees under a sound management program, and therefore, not eligible for taxation at present-use value. North Carolina Property Tax Comm'n, — N.C. App. —, 525 S.E.2d 196, 2000 N.C. App. LEXIS 64 (2000), cert. denied, 351 N.C. 473, — S.E.2d — (2000).

Applied in In re Allred, 351 N.C. 1, 519 S.E.2d 52 (1999); In re Southeastern Baptist Theological Seminary, Inc., 135 N.C. App. 247, 520 S.E.2d 302 (1999); In re Corbett, — N.C. App. —, 530 S.E.2d 90, 2000 N.C. App. LEXIS 617 (2000).

Cited in In re Phoenix Ltd. Partnership, 134 N.C. App. 474, 517 S.E.2d 903 (1999).

Article 26.

Collection and Foreclosure of Taxes.

§ 105-349. Appointment, term, qualifications, and bond of tax collectors and deputies.

Local Modification. — Town of Laurel Park: 2000-8, s. 1. For additional local modifications to this section, see the main volume.

OPINIONS OF ATTORNEY GENERAL

For a discussion of the proper authority and procedures for appointing an interim county tax collector, see opinion of Attorney General to The Honorable Charles Beall, North Carolina House of Representatives, 1998 N.C.A.G. 35 (8/5/98).

§ 105-355. Creation of tax lien; date as of which lien attaches.

CASE NOTES

Stated in City of Durham v. Hicks, 135 N.C. App. 699, 522 S.E.2d 583 (1999).

§ 105-356. Priority of tax liens.

CASE NOTES

Tax Liens Take Priority Over Estate Administration Costs. — The conflict between § 28A-19-6 and this section was resolved in favor of city and county who sought to recover back taxes and interest through a foreclosure proceeding on property, although a guardian ad litem and public administrator, who had advanced funds to administrate the properties, asserted that such foreclosure would cause the tax lien to take precedence over the costs of estate administration in violation of § 28A-19-6 and would result in inequity should the sale fail to render sufficient funds to cover both taxes and costs. City of Durham v. Hicks, 135 N.C. App. 699, 522 S.E.2d 583 (1999).

§ 105-360. Due date; interest for nonpayment of taxes; discounts for prepayment.

Local Modification. — Town of Midland: (for fiscal year 2000-2001, contingent on passage of local referendum) 2000-91, s. 2. For additional local modifications to this section, see the main volume.

§ 105-367. Procedure for levy.

Local Modification. — By virtue of Session Laws 2000-103, s. 6, the local modifications for the Town of Banner Elk by Session Laws 1989, c. 318, as amended by Session Laws 1993, c. 428, should be deleted.

§ 105-368. Procedure for attachment and garnishment.

Local Modification. — By virtue of Session Laws 2000-103, s. 6, the local modifications for the Town of Banner Elk by Session Laws 1989, c. 318, as amended by Session Laws 1993, c. 428, should be deleted.

§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.

(a) Report of Unpaid Taxes That Are Liens on Real Property. — In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. — After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the listing owner and to the record owner of each affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the names of the listing owner and the record owner will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct listing owner or record owner does not affect the validity of the tax lien or of any foreclosure action.

(c) Time and Contents of Advertisement. — A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is permitted.

The posted notice and newspaper advertisement shall set forth the following information:

(1) In the case of property that the listing owner has not transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, in alphabetical order.

(1a) In the case of property that the listing owner has transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of the record owner as of December 31 of each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order, followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner.

(1b) After the information required by subdivision (1) or (1a) of this subsection for each parcel, a brief description of each parcel of land to which a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

(d) Costs. — Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this subsection are taxes.

(e) Payments during Advertising Period. — At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. — No tax lien is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. — Any tax collector or deputy tax collector who willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence. (1939, c. 310, s. 1715; 1955, c. 993; 1971, c. 806, s. 1; 1983, c. 808, s. 1; 1983 (Reg. Sess., 1984), c. 1013; 1993, c. 539, s. 725; 1994, Ex. Sess., c. 24, s. 14(c); 1999-439, s. 1; 2000-140, s. 73.)

Effect of Amendments. —
Session Laws 2000-140, s. 73, effective January 1, 2001, substituted "owner that the names of the listing owner and the record owner" for "listing owner that his or her name" in subsection (b1).

§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

Local Modification. — By virtue of Session Laws 2000-103, s. 6, the local modifications for the Town of Banner Elk by Session Laws 1989, c. 318, as amended by Session Laws 1993, c. 428, should be deleted.

CASE NOTES

I. GENERAL CONSIDERATION.

Applied in City of Durham v. Hicks, 135 N.C. App. 699, 522 S.E.2d 583 (1999).

§ 105-375. In rem method of foreclosure.

Local Modification. — By virtue of Session Laws 2000-103, s. 6, the local modifications for the Town of Banner Elk by Session Laws 1989, c. 318, as amended by Session Laws 1993, c. 428, should be deleted.

Article 27.

Refunds and Remedies.

§ 105-379. Restriction on use of injunction and claim and delivery.

CASE NOTES

Quoted in City of Durham v. Hicks, 135 N.C. App. 699, 522 S.E.2d 583 (1999).

Article 28.

Special Duties to Pay Taxes.

§ 105-383. Fiduciaries to pay taxes.

CASE NOTES

Applied in City of Durham v. Hicks, 135 N.C. App. 699, 522 S.E.2d 583 (1999).

SUBCHAPTER V. MOTOR FUEL TAXES.

Article 36B.

Tax on Carriers Using Fuel Purchased Outside State.

§ 105-449.37. Definitions; tax liability.

(a) Definitions. — The following definitions apply in this Article:

(1) Motor carrier. — A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor vehicle under the International Fuel Tax Agreement. The term does not include the United States, the State, or a political subdivision of the State.

(1a) Motor vehicle. — A motor vehicle as defined in G.S. 105-164.3 other than special mobile equipment as defined in G.S. 105-164.3.

(2) Operations. — Operations of all motor vehicles described in subdivision (1), whether loaded or empty and whether or not operated for compensation.

(2a) Person. — Defined in G.S. 105-228.90.

(3) Secretary. — The Secretary of Revenue.

(b) Liability. — A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period. (1955, c. 823, s. 1; 1973, c. 476, s. 193; 1983, c. 713, s. 55; 1989, c. 7, s. 1; 1991, c. 182, s. 2; c. 487, s. 2; 1991 (Reg. Sess., 1992), c. 913, s. 8; 1993, c. 354, s. 28; 1999-337, s. 36; 2000-140, s. 74.)

Effect of Amendments. — Session Laws 2000-140, s. 74, effective July 21, 2000, substituted "G.S. 105-164.3" for "G.S. 105-164.3(8c)" and "G.S. 105-164.3" for "G.S. 105-164.3(16b)" in subdivision (a)(1a).

§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.

(a) Calculation. — The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the ratio of the number of miles the motor carrier travels in this State during that period to the total number of miles the motor carrier travels inside and outside this State during that period, multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State during that period.

(b) Presumption. — The Secretary must check reports filed under this Article against the weigh station records and other records of the Division of

Motor Vehicles of the Department of Transportation concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. The Department may assess a motor carrier for the amount payable based on the presumed mileage. A motor carrier that does either of the following for a quarter is presumed to have traveled in this State during that quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:

(1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.

(2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.

(c) Vehicles. — The number of vehicles of a motor carrier that is registered under this Article is the number of identification markers issued to the carrier. The number of vehicles of a carrier that is not registered under this Article is the number of vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan. (1955, c. 823, s. 8; 1995, c. 390, s. 35; 1999-337, s. 39; 2000-173, s. 12.)

Effect of Amendments. —
Session Laws 2000-173, s. 12, effective August 2, 2000, substituted "a motor carrier uses" for "a motor carrier carries" in subsection (a); in subsection (b), substituted "must" for "shall" in the first sentence and inserted the second sentence; designated the former last paragraph in subsection (b) as present subsection (c); and in subsection (c), inserted the subsection catchline "Vehicles" and deleted the former last sentence, which read "The Department shall assess a motor carrier for the amount payable based on the presumed mileage."

Article 36C.

Gasoline, Diesel, and Blends.

Part 1. General Provisions.

§ 105-449.60. Definitions.

The following definitions apply in this Article:

(1) Blended fuel. — A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

(2) Blender. — A person who produces blended fuel outside the terminal transfer system.

(3) Bulk-end user. — A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

(4) Bulk plant. — A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(5) Code. — Defined in G.S. 105-228.90.

(6) Destination state. — The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(7) Diesel fuel. — Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.

(8) Distributor. — A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.
(9) Dyed diesel fuel. — Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.
(10) Elective supplier. — A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
(11) Export. — To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.
(12) Fuel alcohol. — Methanol or fuel grade ethanol.
(13) Fuel alcohol provider. — A person who does any of the following:
a. Produces fuel alcohol.
b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.
(14) Gasohol. — A blended fuel composed of gasoline and fuel grade ethanol.
(15) Gasoline. — Any of the following:
a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.
b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.
c. Gasohol.
d. Fuel grade ethanol.
The term does not include aviation gasoline sold for use in an aircraft motor. "Aviation gasoline" is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.
(16) Gross gallons. — The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.
(17) Highway. — Defined in G.S. 20-4.01(13).
(18) Highway vehicle. — A self-propelled vehicle that is designed for use on a highway.
(19) Import. — To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.
(19a) In-State-only supplier. — Either of the following:
a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
b. A supplier that does business only in this State.
(20) Motor fuel. — Gasoline, diesel fuel, and blended fuel.
(21) Motor fuel rate. — The rate of tax set in G.S. 105-449.80.
(22) Motor fuel transporter. — A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.

(23) Net gallons. — The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.
(24) Permissive supplier. — An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.
(25) Person. — Defined in G.S. 105-228.90.
(26) Position holder. — The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
(27) Rack. — A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.
(28) Removal. — A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.
(29) Retailer. — A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.
(30) Secretary. — Defined in G.S. 105-228.90.
(31) Supplier. — Any of the following:
   a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.
   b. A fuel alcohol provider.
(32) System transfer. — Either of the following:
   a. A transfer of motor fuel within the terminal transfer system.
   b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.
(33) Tank wagon. — A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.
(33a) Tax. — An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.
(34) Terminal. — A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.
(35) Terminal operator. — A person who owns, operates, or otherwise controls a terminal.
(36) Terminal transfer system. — The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as "bulk transfer/terminal system" under 26 C.F.R. § 48.4081-1.
(37) Transmix. — Either of the following:
   a. The buffer or interface between two different products in a pipeline shipment.
   b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.
(38) Transport truck. — A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.
(39) Trustee. — A person who is licensed as a supplier, an elective supplier, or a permissive supplier and who receives tax payments from and on behalf of a licensed distributor.

(40) Two-party exchange. — A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

(41) User. — A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at last 10,001 pounds and who does not maintain storage facilities for motor fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 1, 2; 1998-146, s. 3; 2000-173, ss. 13(a), 14(a).)

Effect of Amendments. —
Session Laws 2000-173, s. 13(a), effective July 1, 2000, substituted "exchange" for "transaction" in subdivision (31)a.; and in subdivision (40), substituted "exchange" for "transaction" and substituted "from one licensed supplier ... the position holder agrees" for "between two licensed suppliers as the motor fuel crosses the terminal rack as the result of an exchange agreement or a sale between the suppliers that requires the supplier that is the position holder."

Session Laws 2000-173, s. 14(a), effective August 2, 2000, inserted "that has a registered gross vehicle weight of at last 10,001 pounds and who" and deleted "and" thereafter in subdivision (41).

Part 2. Licensing.

§ 105-449.68. Restrictions on who can get a license as a distributor.

A bulk-end user of motor fuel may not be licensed as a distributor unless the bulk-end user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a bulk-end user that was licensed as a distributor on January 1, 1996. If a distributor license held by a bulk-end user on January 1, 1996, is subsequently cancelled, the bulk-end user is subject to the restriction set in this section. (1995, c. 390, s. 3; 2000-173, s. 14.(b).)

Effect of Amendments. — Session Laws 2000-173, s. 14(b), effective August 2, 2000, inserted the first instance of "bulk-end."

Part 3. Tax and Liability.

§ 105-449.88. Exemptions from the excise tax.

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the motor fuel is removed by a licensed distributor or a licensed exporter and the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.

(1a) Motor fuel removed by transport truck from a terminal for export if the motor fuel is removed by a licensed distributor or licensed exporter, the supplier that is the position holder for the motor fuel sells the motor fuel to another supplier as the motor fuel crosses the terminal rack, the purchasing supplier or its customer receives the motor fuel at the terminal rack for export, and the supplier that is the

position holder collects tax on the motor fuel at the rate of the motor fuel's destination state.
(2) Motor fuel sold to the federal government for its use.
(3) Motor fuel sold to the State for its use.
(4) Motor fuel sold to a local board of education for use in the public school system.
(5) Diesel that is kerosene and is sold to an airport.
(6) Motor fuel sold to a charter school for use for charter school purposes. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 20, 21; 1998-98, s. 28; 1998-146, s. 6; 2000-72, s. 2; 2000-173, ss. 13(b), 15.)

Effect of Amendments. —
Session Laws 2000-72, s. 2, effective October 1, 2000, added subdivision (6).
Session Laws 2000-173, s. 13(b), effective July 1, 2000, added subdivision (1a).
Session Laws 2000-173, s. 15, effective August 2, 2000, inserted "the motor fuel is removed by a licensed distributor or a licensed exporter and" in subdivision (1).

Part 4. Payment and Reporting.

§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.

(a) Taxes Not Remitted. — When a supplier files a return, the supplier may deduct from the amount of tax payable with the return the amount of tax any of the following license holders owes the supplier but failed to remit to the supplier:
(1) A licensed distributor.
(2) A licensed importer that removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.
(3) Repealed by Session Laws 1995, c. 647, s. 32.

A supplier is not liable for tax a license holder listed in this subsection owes the supplier but fails to pay. If a listed license holder pays tax owed to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit the payment to the Secretary.

(b) Administrative Discount. — A supplier that files a timely return and sends a timely payment may deduct from the amount of tax payable with the return an administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable to this State as the trustee, not to exceed eight thousand dollars ($8,000) a month. The discount covers expenses incurred in collecting taxes on motor fuel.

(c) Percentage Discount. — A supplier that sells motor fuel directly to an unlicensed distributor or to the bulk-end user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier.

(d) Taxes Paid on Exempt Retail Sales. — When filing a return, a supplier that issues or authorizes the issuance of an exempt card or an exempt access code to a person that enables the person to buy motor fuel at retail without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt retail card or code. The amount of excise tax imposed on fuel purchased at retail with an exempt retail card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 31, 32; 1997-60, s. 15; 1999-438, s. 23; 2000-173, s. 14(c).)

Effect of Amendments. — Session Laws 2000-173, s. 14(c), effective August 2, 2000, inserted "the" preceding "user" in subsection (c).

Part 5. Refunds.

§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and fuel unsalable for highway use.

(a) Exempt Fuel. — A person may obtain a refund of tax paid by the person on motor fuel sold to a governmental unit whose use of motor fuel is exempt from the motor fuel excise tax. A governmental unit whose use of motor fuel is exempt from the motor fuel excise tax may obtain a refund of tax paid by it on motor fuel. A person may obtain a refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary.

(b) Lost Fuel. — A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a refund for the tax paid on the fuel.

(c) Accidental Mixes. — A person that accidentally combines any of the following may obtain a refund for the amount of tax paid on the fuel:

(1) Dyed diesel fuel with tax-paid motor fuel.
(2) Gasoline with diesel fuel.
(3) Undyed diesel fuel with dyed kerosene.

(d) Repealed by Session Laws 1998-98, s. 29, effective August 14, 1998.

(e) Refund Amount. — The amount of a refund allowed under this section is the amount of excise tax paid, less the amount of any discount allowed on the fuel under G.S. 105-449.93. (1995, c. 390, s. 3; c. 523, ss. 32.1, 32.2; 1995 (Reg. Sess., 1996), c. 647, s. 38; 1997-6, s. 12; 1997-60, s. 17; 1998-98, s. 29; 2000-173, s. 16.)

Effect of Amendments. — Session Laws 2000-173, s. 16, effective August 2, 2000, substituted "and fuel unsalable for highway use" for "fuel unsalable for highway use, and undyed diesel fuel used in boats" in the catchline.

§ 105-449.105A. Monthly refunds for kerosene.

(a) Refund. — A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating.
(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" and either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(b) Liability. — If the Secretary determines that the Department overpaid a distributor by refunding more tax to the distributor than is due under this section, the distributor is liable for the amount of the overpayment. This liability applies regardless of whether the actions of a retailer of kerosene contributed to the overpayment. (1998-146, s. 8; 2000-173, s. 17.)

Effect of Amendments. — Session Laws 2000-173, s. 17, effective August 2, 2000, designated the existing paragraph as present subsection (a) and added subsection (b); inserted "Refund" in subsection (a); and in subdivision (a)(2), substituted "with the phrase 'Undyed, Untaxed Kerosene, Nontaxable Use Only' and either" for "for nonhighway use in accordance with the requirements in G.S. 105-449.123(a)(1) through (a)(3) and," and added "or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene."

Part 6. Enforcement and Administration.

§ 105-449.121. Record-keeping requirements; inspection authority.

(a) What Must Be Kept. — A person who is subject to audit under subsection (b) of this section must keep a record of all shipping documents or other documents used to determine information the person provides in a return or to determine the person's motor fuel transactions. The records must be kept for three years from the due date of the return to which the records apply or, if the records apply to a transaction not required to be reported in a return, for three years from the date of the transaction.

(b) Inspection. — The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

(1) Audit a distributor or a person who is required to have or elects to have a license under this Article.

(2) Audit a distributor, a retailer, a bulk-end user, or a motor fuel user that is not licensed under this Article.

(3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.

(4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.

(5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 43; 2000-173, s. 18.)

Effect of Amendments. — Session Laws 2000-173, s. 18, effective August 2, 2000, inserted "a retailer, a bulk-end user" in subdivision (b)(2).

SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX.

Article 39.

Local Government Sales and Use Tax.

§ 105-466. Levy of tax.

(a) In the event a majority of those voting in a special election held pursuant to G.S. 105-465 shall approve the levy of the local sales and use tax, the board of county commissioners may, by resolution, proceed to levy the tax.

(b) In addition, the board of county commissioners may, in the event no election has been held within five years under the provisions of G.S. 105-465 in which the tax has been defeated, after not less than 10 days' public notice and after a public hearing held pursuant thereto, by resolution, impose and levy the local sales and use tax to the same extent and with the same effect as if the levy of the tax had been approved in an election held pursuant to G.S. 105-465.

(b1) If the board of commissioners of a county has imposed the local sales and use tax authorized by this Article and any or all of the taxes authorized by Articles 40 and 42 of this Chapter, with or without a special election, and the county subsequently becomes part of a consolidated city-county, the taxes shall continue in effect unless and until repealed by the governing board of the consolidated city-county.

(c) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of the month of either January or July, as set by the board of county commissioner set by the board of county commissioners in the resolution levying the tax. In no event may the tax be imposed, or the tax rate changed, earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution. The county must give the Secretary at least 90 days advance notice of a new tax levy or tax rate change.

(d) Upon adoption of a resolution levying the tax, the board of county commissioners shall immediately deliver a certified copy of the resolution to the Secretary, accompanied by a certified statement from the county board of elections, if applicable, setting forth the results of any special election approving the tax in the county. Upon receipt of these documents, the Secretary shall collect and administer the tax as provided in this Article. (1971, c. 77, s. 2; 1973, c. 302; c. 476, s. 193; 1977, c. 372, s. 1; 1993, c. 485, s. 22; 1995, c. 461, s. 16; 2000-120, s. 12.)

Editor's Note. — This section was amended by Session Laws 2000-120, s. 12 in the coded bill drafting format. The amendment added the phrase "set by the board of county commissioner," which already appeared in subsection (c). Subsection (c) has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2000-120, s. 12, effective July 14, 2000, in subsection (c), in the first sentence, substituted "the month of either January or July, as set by the board of county commissioners" for "a calendar month" and deleted "which shall in no case be" following "levying the tax," inserted "In no event may the tax be imposed, or the tax rate changed" in the second sentence, and added the third sentence.

Chapter 105A.

Setoff Debt Collection Act.

Article 1.

In General.

Article 1.

In General.

§ 105A-13. Collection assistance fees.

(a) State Setoff. — To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars ($15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt. The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

(b) Federal Setoff. — A collection assistance fee of fifteen dollars ($15.00) applies to a setoff made by the United States Department of the Treasury to recover tax owed to North Carolina. The Department of Revenue must add the fee to the amount of the tax liability submitted to the United States Department of the Treasury for setoff. The Department of Revenue must collect the fee as part of the debt and retain it. If a federal setoff covers only part of the tax due, the collection assistance fee has priority over the tax due. (1979, c. 801, s. 94; 1989 (Reg. Sess., 1990), c. 946, s. 3; 1995, c. 360, s. 4(a); 1997-490, s. 1; 2000-126, s. 6.)

Effect of Amendments. —
Session Laws 2000-126, s. 6, effective July 14, 2000, designated the existing paragraph as subsection (a) and added subsection (b); and inserted "State Setoff" in subsection (a).

Chapter 106.

Agriculture.

Article 4C.

Structural Pest Control Act.

§ 106-65.23. Structural Pest Control Division of Department of Agriculture and Consumer Services recreated; Director; powers and duties of Commissioner; Structural Pest Control Committee created; appointment; terms; powers and duties; quorum.

(a) There is recreated, within the North Carolina Department of Agriculture and Consumer Services, a Division to be known as the Structural Pest Control Division. The Commissioner of Agriculture may appoint a Director of the Division, chosen from a list of nominees submitted to him by the Structural Pest Control Committee created in this section, whose duties and authority shall be determined by the Commissioner in consultation with the Committee. The Director shall be responsible for and answerable to the Commissioner of Agriculture and the Structural Pest Control Committee as to the operation and conduct of the Structural Pest Control Division. The Director shall act as secretary to the Structural Pest Control Committee.

(b) The Commissioner shall have the following powers and duties under this Article:

(1) To administer and enforce the provisions of this Article and the rules adopted thereunder by the Structural Pest Control Committee. In order to carry out these powers and duties, the Commissioner may delegate to the Director of the Structural Pest Control Division the powers and duties assigned to him under this Article.

(2) To assign the administrative and enforcement duties assigned to him in this Article.

(3) To direct, in consultation with the Structural Pest Control Committee, the work of the personnel employed by the Structural Pest Control Committee and the work of the personnel of the Department assigned to perform the administrative and enforcement functions of this Article.

(4) To develop, for the Structural Pest Control Committee's consideration for adoption, proposed rules, policies, new programs, and revisions of existing programs under this Article.

(5) To monitor existing enforcement programs and to provide evaluations of these programs to the Structural Pest Control Committee.
(6) To attend all meetings of the Structural Pest Control Committee, but without the power to vote unless the Commissioner attends as the designee on the Committee from the Department of Agriculture and Consumer Services.
(7) To keep an accurate and complete record of all meetings of the Structural Pest Control Committee and to have legal custody of all books, papers, documents, and other records of the Committee.
(8) To perform such other duties as may be assigned to him by the Structural Pest Control Committee.

(c) There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on the Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of the University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of the University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of the dean's choice from the entomology faculty of the University to serve on the Committee at the pleasure of the dean. The Secretary of Health and Human Services shall appoint one member of the Committee who shall be an epidemiologist and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of the Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company.

The Governor's initial appointees from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture and Consumer Services, the Department of Health and Human Services and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant.

One member of the Committee shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member of the Committee shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be actively engaged in the pest control industry, licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and a resident of the State of North Carolina but not an affiliate of the same company as either of the two members from the industry appointed by the Governor. Appointments made by the General

Assembly shall be for terms of four years. Vacancies in such appointments shall be filled in accordance with G.S. 120-122.

(d) The Structural Pest Control Committee shall have the following powers and duties:

(1) To adopt rules and make policies as provided in this Article.
(2) To issue, deny, suspend, revoke, modify, or restrict licenses, certified applicator cards, and registered technician cards under the provisions of this Article. In all matters affecting licensure, the decision of the Committee shall constitute the final agency decision.
(3) To report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

(e) Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Five members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee. (1955, c. 1017; 1057, c. 1243, s. 1; 1967, c. 1184, s. 1; 1969, c. 541, s. 7; 1973, c. 556, s. 1; 1975, c. 570, ss. 1, 2; 1977, c. 231, s. 2; 1987, c. 827, s. 26; 1989, c. 238; c. 727, s. 219(30); 1997-261, s. 27; 1997-443, s. 11A.40; 1998-224, s. 19(a); 1999-381, s. 1; 2000-175, s. 1.)

Effect of Amendments. — Session Laws 2000-175, s. 1, effective October 1, 1999, and applicable to members appointed on or after that date under G.S. 106-65.23, as amended by the act, in subsection (c), transferred the former second paragraph so as to be the first and last sentence in the third paragraph and inserted the second and third sentences in that paragraph, and in the present second paragraph substituted "Governor's initial appointees" for "initial Committee members" and deleted the former fifth sentence stating, "Appointments made by the General Assembly shall be for terms of two years."

Article 12.

Food, Drugs and Cosmetics.

§ 106-121. Definitions and general consideration.

CASE NOTES

Quoted in Trexler v. Pollock, 135 N.C. App. 601, 522 S.E.2d 84 (1999).

§ 106-130. Foods deemed misbranded.

A food shall be deemed to be misbranded:

(1)a. If its labeling is false or misleading in any particular, or

b. If its labeling or packaging fails to conform with the requirements of G.S. 106-139 and 106-139.1 of this Article.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed or filled as to be misleading.

(5) If in package form, unless it bears a label containing

a. The name and place of business of the manufacturer, packer, or distributor; and

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label:

Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(6) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by G.S. 106-128, unless

a. It conforms to such definition and standard, and

b. Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(8) If it purports to be or is represented as

a. A food for which a standard of quality has been prescribed by regulations as provided by G.S. 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

b. A food for which a standard or standards of fill of container have been prescribed by regulation as provided by G.S. 106-128, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(9) If it is not subject to the provisions of subdivision (7) of this section, unless its label bears

a. The common or usual name of the food, if any there be, and

b. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each:

Provided, that, to the extent that compliance with the requirements of paragraph b of this subdivision is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board of Agriculture.

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board of Agriculture determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, unless it bears labeling stating that fact: Provided, that to the extent that compliance with the requirements of this subdivision are impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture. The provisions of this subdivision and subdivisions (7) and (9) with respect to artificial coloring do not apply to butter, cheese, or ice cream. The provisions of this subdivision with respect to chemical preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the product of the soil.

(12) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical: Provided, however, that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade.

(13) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

(14) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of G.S. 106-132 of this Article.

(15) If the labeling provided by the manufacturer, packer, distributor, or retailer on meat, meat products, poultry, or seafood includes a "sell-by" date or other indicator of a last recommended day of sale, and the date has been removed, obscured, or altered by any person other than the customer. This subdivision does not prohibit the removal of a label for the purpose of repackaging and relabeling a food item so long as the new package or new label does not bear a "sell-by" date or other indicator of a last recommended day of sale later than the original package. This subdivision does not prohibit relabeling of meat, meat products, poultry, or seafood that has had its shelf life extended through freezing, cooking, or other additional processing that extends the shelf life of the product. (1939, c. 320, s. 11; 1975, c. 614, ss. 17-20; 2000-67, s. 7.10.)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7.10, effective July 1, 2000, added subdivision (15).

Article 38B.

Cotton Gins, Warehouses, Merchants.

§§ 106-451.45 through 106-451.49: Reserved for future codification purposes.

Editor's Note. — The reserve line above is set out to correct an error in the main volume.

Article 57.

Nuisance Liability of Agricultural and Forestry Operations.

§ 106-700. Legislative determination and declaration of policy.

Legal Periodicals. —

For note, "Hog Farms and Nuisance Law in Parker v. Barefoot: Has North Carolina Become a Hog Heaven and Waste Lagoon?" see 77 N.C. L. Rev. 2355 (1999).

Article 61.

Preservation of Farmland.

§ 106-744. Purchase of agricultural conservation easements.

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by G.S. 106-737 located within a voluntary agricultural district as defined by G.S. 106-738.

(b) For purposes of this section, "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

(1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations; and

(2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a "North Carolina Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for the purchase of agricultural conservation easements, including transaction costs, and shall distribute Trust Fund monies for such purchases, including transaction costs, as follows:

(1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.

(2) To counties according to the match requirements under subsection (c1) of this section.

(c1) A county that is an enterprise tier four county or an enterprise tier five county, as these tiers are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c2) The Commissioner of Agriculture shall adopt rules governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement.

(e) As used in subsection (c1) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

(1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.
(2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.
(3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.
(4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.
(5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739. (1991, c. 734, s. 1; 2000-171, ss. 1, 2.)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 12.1, provides: "Notwithstanding the provisions of G.S. 106-744(b), funds appropriated in this act to the Department of Agriculture and Consumer Services for the Farmland Preservation Trust Fund for the 2000-2001 fiscal year shall be used for the purchase of agricultural conservation easements that are perpetual in duration and which shall not be reconveyed under any circumstances."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-171, ss. 1 and 2, effective July 1, 2000, in subsection (c), deleted "to counties and private nonprofit conservation organizations" following "Trust Fund monies" and added "as follows:"; added subdivisions (c)(1) and (2); added subsection (c1); designated the last sentence in subsection (c) as present subsection (c2), and deleted "and regulations" following "shall adopt rules"; and added subsections (e) and (f).

Article 67.

Swine Farms.

§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

OPINIONS OF ATTORNEY GENERAL

Previous Lesser Setback Requirements. — Any person commencing new construction or expansion of a covered animal waste management system must comply with the setbacks required by this section, even if the requisite permits from the Division of Water Quality were based on an application or site evaluation with lesser setbacks prior to the effective date of the relevant 1997 amendments, unless such person can show he has a vested right due to detrimental reliance. See opinion of Attorney General to Mr. Preston Howard, Director Division of Water Quality Department of Environment and Natural Resources, 1997 N.C.A.G. 60 (9/29/97).

Chapter 108A.

Social Services.

Article 2.

Programs of Public Assistance.

Part 2. Work First Program.

Part 6. Medical Assistance Program.

Part 8. Health Insurance Program for Children.

Article 6.

Protection of the Abused, Neglected or Exploited Disabled Adult Act.

Article 1.

County Administration.

Part 1. County Boards of Social Services.

§ 108A-1. Creation.

CASE NOTES

Personal Jurisdiction. — In a case alleging negligent placement of a foster child who sexually assaulted another child, where defendants raised the issues of failure to state a claim and lack of subject matter jurisdiction, but failed to raise the issue of personal jurisdiction, and stipulated in the record before the appellate court that they were properly before the trial court, the defendants could not argue that they were not subject to suit under Chapters 108A and 122C and under § 153A-77. Hobbs v. North Carolina Dep't of Human Resources, 135 N.C. App. 412, 520 S.E.2d 595 (1999).

Part 2. County Director of Social Services.

§ 108A-14. Duties and responsibilities.

CASE NOTES

Liability of Social Workers Negligently Placing Foster Child. — The language of subsection (b) of this section and the holding of Meyer v. Walls, 347 N.C. at 111, 489 S.E.2d at 888, lead to the conclusion that defendants who were acting for and representing a director of social services were acting as public officials and could therefore not be held individually liable in a case alleging negligent placement of a foster child. Hobbs v. North Carolina Dep't of Human Resources, 135 N.C. App. 412, 520 S.E.2d 595 (1999).

Article 2.

Programs of Public Assistance.

Part 2. Work First Program.

§ 108A-27.3. Electing Counties — Duties of county boards of commissioners.

OPINIONS OF ATTORNEY GENERAL

Provisions Governing Appeals. — An Electing County cannot utilize the hearing officers provided by the State to Standard Counties and have them resolve Electing County appeals pursuant to G.S. § 108A-79. See opinion of Attorney General to Kevin M. FitzGerald, Director, Division of Social Services. N.C. Dept. of Health and Human Services, N.C. General Assembly, 1999 N.C.A.G. 12 (4/9/99).

§ 108A-27.8. Standard Program Counties — Duties of Department.

(a) The Department shall establish, develop, supervise, and monitor the Standard Work First Program. In addition to its general duties prescribed in G.S. 108A-27.2, the Department shall have the following duties with respect to the Standard Work First Program and the Standard Program Counties:

(1) Establish the requirements for the content of County Plans and review and approve the County Plans submitted by the Standard Program Counties;

(2) Advise and assist the Social Services Commission in adopting rules necessary to implement the provisions of this Article;

(3) Supervise disbursement of county block grants to the Standard Program Counties for Work First Services;

(4) Make payments of Work First Family Assistance and Work First Diversion Assistance;

(5) Coordinate activities of other State and county agencies in meeting the goals of the Work First Program;

(6) Work with State and county agencies and with private sector organizations and individuals to develop programs and methods to meet the goals of the Work First Program; and

(7) Develop a Mutual Responsibility Agreement for use by Standard Program Counties.

(b) The Secretary, in consultation with the Office of State Budget, Planning, and Management, may adopt temporary rules when necessary to:

(1) Implement provisions of the State Plan;

(2) Maximize federal revenues to prevent the loss of federal funds;

(3) Enhance the ability of the Department to prevent fraud and abuse in the Work First Program; and

(4) Modify the provisions in the State Plan as necessary to meet changed circumstances after approval of the State Plan.

(c) The Social Services Commission may adopt rules in accordance with G.S. 143B-153 when necessary to implement this Article and subject to delegation by the Secretary of any rule-making authority to implement the provisions of the State Plan. (1997-443, s. 12.6; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (b).

Part 4. Foster Care and Adoption Assistance Payments.

§ 108A-50. State benefits for certain adoptive children.

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 5(h), effective July 1, 2000, appropriates $511,687 in the Social Services Block Grant to the Department of Health and Human Services, Special Children Adoption Fund, for the 2000-2001 fiscal year, to enhance the adoption services program. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed public and private adoption agencies, is to develop guidelines for awarding of funds to adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care.

Session Laws 2000-67, s. 11.15(a), appropriates $1,110,000 to support the Special Children Adoption Fund for the 2000-2001 fiscal year to enhance adoption services. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, is to develop guidelines for awarding funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. No local match is required as a condition for receipt of these funds.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Part 6. Medical Assistance Program.

§ 108A-54. Authorization of Medical Assistance Program.

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 11.6(a), provides: "Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for the 1999-2000 fiscal year, the Department shall transfer to the Mental Health Restricted Reserve not more than the amount of actual expenditures for Medicaid payments for the 1998-99 fiscal year for services provided by area mental health authorities. The Department shall transfer from the Division of Medical Assistance the estimated amount needed to match Medicaid payments for the former Carolina Alternatives Programs. The Department shall not transfer from area program allocations funds to cover Medicaid payment expenditures that exceed the amount of funds in the Reserve for the 1999-2000 fiscal year."

Session Laws 2000-67, s. 11.6(c), provides: "Effective July 1, 2000, the county share of the cost of Medicaid Personal Care Services paid to adult care homes shall be decreased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§§ 108A-70.6 through 108A-70.9: Reserved for future codification purposes.

Editor's Note. — The reserve line above is set out to correct an error in the main volume.

Part 8. Health Insurance Program for Children.

§ 108A-70.18. Definitions.

As used in this Part, unless the context clearly requires otherwise, the term:

(1) "Comprehensive health coverage" means creditable health coverage as defined under Title XXI.

(2) "Family income" has the same meaning as used in determining eligibility for the Medical Assistance Program.

(3) "FPL" or "federal poverty level" means the federal poverty guidelines established by the United States Department of Health and Human Services, as revised each April 1.

(4) "Medical Assistance Program" means the State Medical Assistance Program established under Part 6 of Article 2 of Chapter 108A of the General Statutes.

(5) "Program" means The Health Insurance Program for Children established in this Part.

(6) "State Plan" means the State Child Health Plan for the State Children's Health Insurance Program established under Title XXI.

(7) "Title XXI" means Title XXI of the Social Security Act, as added by Pub. L. 105-33, 111 Stat. 552, codified in scattered sections of 42 U.S.C. (1997).

(8) "Uninsured" means the applicant for Program benefits is and was not covered under any private or employer-sponsored comprehensive health insurance plan for 60 days immediately preceding the date of application. The waiting periods required under this subdivision shall be waived if:

a. The child has been enrolled in Medicaid and has lost Medicaid eligibility;

b. The child has lost health care benefits due to cessation of a nonprofit organization program that provides health care benefits to low-income children;

c. The child has lost employer-sponsored comprehensive health care coverage due to termination of employment, cessation by the employer of employer-sponsored health coverage, or cessation of the employer's business; or

d. Health insurance benefits available to the family of a special needs child have been terminated due to a long-term disability or a substantial reduction in or limitation of lifetime medical benefits or benefit category. As used in this paragraph, "special needs child" has the definition applied in G.S. 108A-70.23(a). (1998-1, s. 1; 1998-166, s. 6; 2000-67, s. 11.8(a); 2000-140, s. 90(d).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 11.8.(a), as amended by Session Laws 2000-140, s. 90(d), effective July 1, 2000, substituted "As used in this Part, unless" for "Unless" in the introductory paragraph and rewrote subdivision (8).

Article 4.

Public Assistance and Social Services Appeals and Access to Records.

§ 108A-79. Appeals.

OPINIONS OF ATTORNEY GENERAL

Electing County Appeals. — An Electing County cannot utilize the hearing officers provided by the State to Standard Counties and have them resolve Electing County appeals pursuant to this section. See opinion of Attorney General to Kevin M. FitzGerald, Director, Division of Social Services. N.C. Dept. of Health and Human Services, N.C. General Assembly, 1999 N.C.A.G. 12 (4/9/99).

Article 6.

Protection of the Abused, Neglected or Exploited Disabled Adult Act.

§ 108A-103. Duty of director upon receiving report.

(a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. When necessary for a complete evaluation of the report, the director shall have the authority to review and copy any and all records, or any part of such records, related to the care and treatment of the disabled adult that have been maintained by any individual, facility or agency acting as a caretaker for the disabled adult. This shall include but not be limited to records maintained by facilities licensed by the North Carolina Department of Health and Human Services. Use of information so obtained shall be subject to and governed by the provisions of G.S. 108A-80 and Article 3 of Chapter 122C of the General Statutes. The director shall have the authority to conduct an interview with the disabled adult with no other persons present. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the disabled adult needs protective services.

(b) The staff and physicians of local health departments, area mental health, developmental disabilities, and substance abuse authorities, and other public or private agencies shall cooperate fully with the director in the performance of his duties. These duties include immediate accessible evaluations and in-home evaluations where the director deems this necessary.

(c) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate.

(d) The director shall initiate the evaluation described in subsection (a) of this section as follows:

(1) Immediately upon receipt of the complaint if the complaint alleges a danger of death in an emergency as defined in G.S. 108A-101(g).

(2) Within 24 hours if the complaint alleges danger of irreparable harm in an emergency as defined by G.S. 108A-101(g).

(3) Within 72 hours if the complaint does not allege danger of death or irreparable harm in an emergency as defined by G.S. 108A-101(g).

(4) Repealed by Session Laws 2000, c. 131, s. 1, effective July 14, 2000. The evaluation shall be completed within 30 days for allegations of abuse or neglect and within 45 days for allegations of exploitation. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1; 1985, c. 589, s. 35; c. 658, s. 1; 1985 (Reg. Sess., 1986), c. 863, s. 6; 1991, c. 636, s. 19(c); 1997-443, s. 11A.118(a); 1999-334, s. 1.10; 2000-131, s. 1.)

Effect of Amendments. —
Session Laws 2000-131, s. 1, effective July 14, 2000, substituted "danger of death in an emergency as defined in G.S. 108A-101(g)" for "life-threatening situation" in subdivision (d)(1); substituted "danger of irreparable harm in an emergency as defined by G.S. 108A-101(g)" for "abuse of a resident as defined by G.S. 131D-20(1)" in subdivision (d)(2); substituted present subdivision (d)(3) for "Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8)"; repealed former (d)(4), which read: "Within two weeks in all other situations"; and substituted the last sentence for "The investigation shall be completed within 30 days."

§ 108A-105. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc.

(a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.

(b) **(Effective until July 1, 2001)** The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17. If the person is indigent, the cost of representation shall be borne by the State.

(b) **(Effective July 1, 2001)** The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days" notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then a guardian ad litem shall be appointed pursuant to G.S. 1A-1, Rule 17, and rules adopted by the Office of Indigent Defense Services. If the person is indigent, the cost of representation shall be borne by the State.

(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with Chapter 35A; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with Chapter 35A. No disabled adult may be committed to a mental health facility under this Article.

(d) A determination by the court that a person lacks the capacity to consent to protective services under the provisions of this Chapter shall in no way affect incompetency proceedings as set forth in Chapters 33, 35 or 122 of the General Statutes of North Carolina, or any other proceedings, and incompetency proceedings as set forth in Chapters 33, 35, or 122 shall have no conclusive effect upon the question of capacity to consent to protective services as set forth in this Chapter. (1973, c. 1378, s. 1; 1975, c. 797; 1977, c. 725, s. 3, 1979, c. 1044, s. 5; 1981, c. 275, s. 1; 1985, c. 658, s. 2; 1987, c. 550, s. 25; 2000-144, s. 36.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out is effective until July 1, 2001. The second version of subsection (b) set out is effective July 1, 2001.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Effect of Amendments. — Session Laws 2000-144, s. 36, effective July 1, 2001, substituted "a guardian ad litem shall be appointed pursuant to G.S. 1A-1, Rule 17, and rules adopted by the Office of Indigent Defense Services" for "the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17" in subsection (b).

Chapter 110.

Child Welfare.

Article 2.

Juvenile Services.

§§ 110-26 through 110-38: Repealed by Session Laws 1969, c. 911, s. 1.

Editor's Note. — Session Laws 1999-293, s. 16, effective October 1, 1999, had provided: "Section 16. G.S. 110-36.3 is amended by adding a new subsection to read:" and set out a new subsection (d1). There is no G.S. 110-36.3, and G.S. 110-26 to 110-38 were repealed in 1969. It appears likely that the intent of the act was to add a subsection (d1) to G.S. 110-136.3. Subsequently, Session Laws 2000-140, s. 20 (a) repealed Session Laws 1999-293, s. 16, and Session Laws 2000-140, s. 20(b) added a subsection (d1) to G.S. 110-136.3.

Article 6.

Governor's Advocacy Council on Children and Youth.

§§ 110-73 through 110-84: Reserved for future codification purposes.

Editor's Note. — The reserve line above is set out to correct an error in the main volume.

Article 7.

Child Care Facilities.

§ 110-86. Definitions.

CASE NOTES

After-School Program Not a Day-Care Facility. — Court disagreed with the plaintiff's contention that after-school program was a day-care facility and a non-traditional governmental activity not entitled to governmental immunity under § 115C-42, because the program did not meet the statutory definition of "day-care facility" under this section, the record revealed no evidence of profits, and the fees were insubstantial. Schmidt v. Breeden, 134 N.C. App. 248, 517 S.E.2d 171 (1999).

§ 110-109. Child care subsidy rates.

(a) The Department shall conduct a statewide market rate study of child care facilities at least once every two years. The study shall include a survey of all licensed facilities. Based on the results of this study, the Department shall establish a market rate for child care centers and homes at each rated quality level for each county and for each age group. The Department shall also calculate a statewide market rate at each rated quality level for each age group. The market rate shall be set at the seventy-fifth percentile of fees charged to unsubsidized, privately paying parents at each rated quality level for each age group.

(b) Within six months of completing a statewide market rate study, the Department shall publish the results of that study and implement market rates based on the results of that study.

(c) When a county has at least 75 children in an age group at a particular rated quality level, the subsidy rate is the county market rate for that age group at that rated quality level. When a county has fewer than 75 children in an age group at a particular rated quality level, the subsidy rate is the statewide market rate for that age group at that rated quality level.

(d) Notwithstanding the provisions of subsection (c) of this section, when it can be demonstrated that the statewide market rate is lower than the county market rate and that setting the subsidy rate at the statewide market rate would inhibit the ability of a county to purchase child care for low-income children, the subsidy rate shall be the county market rate. (2000-67, s. 11.27(b).)

Editor's Note. — Session Laws 2000-67, s. 28.5, made this section effective July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 11.27(c), provides that the first market rate study required by G.S. 110-109, as enacted by the act, is to be completed no later than April 1, 2001.

Session Laws 2000-67, s. 11.27(d), directs the Department of Health and Human Services to conduct a one-time interim market rate study, to be completed no later than April 1, 2002, which study is to incorporate the results of the April 2001 study and is to contain a survey of rates charged at child care facilities that have changed their rate quality level since the survey conducted for the April 2001. The Department is to implement the results of this study within six months of its completion.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§§ 110-110 through 110-114: Reserved for future codification purposes.

ARTICLE 9.

Child Support.

§ 110-132.1. Paternity determination by another state entitled to full faith and credit.

CASE NOTES

Applied in New York v. Paugh, 135 N.C. App. 434, 521 S.E.2d 475 (1999).

§ 110-136.3. Income withholding procedures; applicability.

(a) Required Contents of Support Orders. All child support orders, civil or criminal, entered or modified in the State in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order shall:

(1) Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing address;

(2) , (2a) Repealed by Session Laws 1993, c. 517, s. 1.

(3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income;

(4) Require the custodial party to keep the obligor informed of (i) the custodial party's disposable income and the amount and effective date of any substantial change in this disposable income and (ii) the current residence and mailing address of the child, unless the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B of the General Statutes; and

(5) Require the obligor to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income.

(a1) Payment Plan/Work Requirement for Past-Due Support. In any IV-D case in which an obligor owes past-due support and income withholding has been ordered but cannot be implemented against the obligor, the court may order the obligor to pay the support in accordance with a payment plan approved by the court and, if the obligor is subject to the payment plan and is not incapacitated, the court may order the obligor to participate in such work activities, as defined under 42 U.S.C. § 607, as the court deems appropriate.

(b) When obligor subject to withholding.

(1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month, or the date on which the obligor or obligee requests withholding.

(2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:

a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month;

b. The date on which the obligor requests withholding; or

c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

(3) In IV-D child support cases in which an order was issued or modified in this State prior to October 1, 1996, and in which the obligor is not otherwise subject to withholding, the obligor shall become subject to withholding if the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month.

(4) In the enforcement of alimony or postseparation support orders pursuant to G.S. 110-130.2, an obligor shall become subject to income withholding on the earlier of:

a. The date on which the obligor fails to make legally obligated alimony or postseparation payments; or

b. The date on which the obligor or obligee requests withholding.

(c) Repealed by Session Laws 1993, c. 517, s. 1.

(d) Interstate cases. An interstate case is one in which a child support order of one state is to be enforced in another state.

(1) In interstate cases withholding provisions shall apply to a child support order of this or any other state. A petition addressed to this State to enforce a child support order of another state or a petition from an initiating party in this State addressed to another state to enforce a child support order entered in this State shall include:

a. A certified copy of the support order with all modifications, including any income withholding notice or order still in effect;

b. A copy of the income withholding law of the jurisdiction which issued the support order, provided that this jurisdiction has a withholding law;

c. A sworn statement of arrearages;

d. The name, address, and social security number of the obligor, if known;

e. The name and address of the obligor's employer or of any other source of income of the obligor derived in the state in which withholding is sought; and

f. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(2) The law of the state in which the support order was entered shall apply in determining when withholding shall be implemented and interpreting the child support order. The law and procedures of the state where the obligor is employed shall apply in all other respects.

(3) Except as otherwise provided by subdivision (2), income withholding initiated under this subsection is subject to all of the notice, hearing and other provisions of Chapter 110.

(4) In all interstate cases notices and orders to withhold shall be served upon the payor by a North Carolina agency or judicial officer. In all interstate non-IV-D cases, the advance notice to the obligor shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(5) For purposes of enforcing a petition under this subsection, jurisdiction is limited to the purposes of income withholding and Chapter 52A of

the General Statutes shall not apply. Nothing in this subsection precludes any remedy otherwise available in a proceeding under Chapter 52A of the General Statutes.

(d1) Employment verifications. — For the purpose of establishing or modifying a child support order, the amount of the obligor's gross income may be established by a written statement signed by the obligor's employer or the employer's designee or an Employee Verification form produced by the Automated Collections Tracking System that has been completed and signed by the obligor's employer or the employer's designee. A written statement signed by the employer of the obligor or the employer's designee that sets forth an obligor's gross income, as well as an Employee Verification form signed by the obligor's employer or the employer's designee, shall be admissible evidence in any action establishing or modifying a child support order.

(e) Procedures and regulations. Procedures, rules, regulations, forms, and instructions necessary to effect the income withholding provisions of this Article shall be established by the Secretary of the Department of Health and Human Services or the Secretary's designee and the Administrative Office of the Courts. Forms and instructions shall be sent with each order or notice of withholding. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 1; 1989, c. 601, s. 2; 1993, c. 517, s. 1; 1997-433, ss. 3, 6.1; 1997-443, s. 11A.118(a); 1998-17, s. 1; 1998-176, s. 4; 2000-140, s. 20(b).)

Editor's Note. —

Session Laws 1999-293, s. 16, effective October 1, 1999, had provided: "Section 16. G.S. 110-36.3 is amended by adding a new subsection to read:" and set out a new subsection (d1). There is no G.S. 110-36.3, and G.S. 110-26 to 110-38 were repealed in 1969. It appears likely that the intent of the act was to add a subsection (d1) to G.S. 110-136.3. Subsequently, Session Laws 2000-140, s. 20 (a) repealed Session Laws 1999-293, s. 16, and Session Laws 2000-140, s. 20(b) added a subsection (d1) to G.S. 110-136.3.

Effect of Amendments. —

Session Laws 2000-140, s. 20(b), effective July 21, 2000, added subsection (d1).

Chapter 111.

Aid to the Blind.

Article 1.

General Duties of Department of Health and Human Services.

§ 111-4. Register of State's blind.

(a) The Department of Health and Human Services shall cause to be maintained a complete register of the blind in the State that shall describe the condition and cause of blindness of each and any other facts that may seem to the Department of Health and Human Services to be of value.

(b) When, upon examination by a physician or optometrist, any person is found to be blind, the examiner shall report the results of the examination to the Department of Health and Human Services within 30 days after the examination is conducted. (1935, c. 53, s. 3; 1973, c. 476, s. 143; 1975, c. 19, s. 35; 1997-443, s. 11A.118(a); 2000-121, s. 1.)

Effect of Amendments. — Session Laws 2000-121, s. 1, effective July 14, 2000, designated the existing paragraph as subsection (a) and rewrote it; and added subsection (b).

§ 111-5: Repealed by Session Laws 2000-121, s. 2, effective July 14, 2000.

§ 111-6. Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds.

The Department of Health and Human Services may establish one or more training schools and workshops for employment of suitable blind and visually impaired persons, equip and maintain these schools and workshops, pay employees suitable wages, devise means for the sale and distribution of the products of these schools and workshops, and cooperate with shops already established. The Department of Health and Human Services may also pay for lodging, tuition, support and all necessary expenses for blind and visually impaired persons during their training or instruction in any suitable occupation, whether it be in industrial, commercial, professional, or any other establishments, schools or institutions, or through private instruction when in the judgment of the Department of Health and Human Services this instruction or training can be obtained and will contribute to the efficiency or self-support of the blind and visually impaired persons. When special educational opportunities cannot be had within the State, they may be arranged for, at the discretion of the Department of Health and Human Services, outside of the State. The Department of Health and Human Services may also aid individual blind and visually impaired persons or groups of blind and visually impaired persons to become self-supporting by furnishing material or equipment to them and by assisting them in the sale and distribution of their products. Any portion of the funds appropriated to the Department of Health and Human Services under the provisions of this Chapter providing for the rehabilitation of the blind and visually impaired and the prevention of blindness may, when the Commission for the Blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of G.S. 111-13 through G.S. 111-26. Whenever possible such funds may be matched by funds provided by the federal Social Security Act, 42 U.S.C. § 301, et seq., as amended. (1935, c. 53, s. 5; 1937, c. 124, s. 16; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a); 2000-121, s. 3.)

Effect of Amendments. — Session Laws 2000-121, s. 3, effective July 14, 2000, inserted "and visually impaired" following "blind" throughout, and otherwise clarified provisions and deleted obsolete language.

§ 111-6.1. Rehabilitation center for the blind and visually impaired.

The Department of Health and Human Services shall establish and operate a rehabilitation center for the blind and visually impaired for the purpose of evaluating and providing instruction in specialized independent living, prevocational, and vocational skills to blind and visually impaired persons to prepare them for obtaining and maintaining employment.

The Commission shall make all rules necessary for this purpose and the Department of Health and Human Services may enter into any agreement or contract; to purchase or lease property, both real and personal, to accept grants and gifts of whatever nature, and to do all other things necessary to carry out the intent and purposes of this rehabilitation center.

The Department of Health and Human Services may receive grants-in-aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for blind and visually impaired persons under the provisions of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, 29 U.S.C. § 701, et seq., as amended. Blind and visually impaired persons as defined in G.S. 111-11, who are physically present in North Carolina may enjoy the benefits of this section or any other related rehabilitation benefits under the Rehabilitation Act of 1973, as amended. (1945, c. 698; 1951, c. 319, s. 4; 1971, c. 1215, s. 2; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a); 2000-121, s. 4.)

Effect of Amendments. — Session Laws 2000-121, s. 4, effective July 14, 2000, rewrote the section.

§ 111-7. In-home services.

The Department of Health and Human Services may foster maximum independence of blind and visually impaired persons through the provision of in-home independent living, development of community-based support groups, and related services as it deems advisable. (1935, c. 53, s. 6; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a); 2000-121, s. 5.)

Effect of Amendments. — Session Laws 2000-121, s. 5, effective July 14, 2000, substituted "foster maximum independence ... deems advisable" for "ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the Department of Health and Human Services may deem advisable."

§ 111-8. Investigations; eye examination and treatment.

The Department of Health and Human Services shall continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are preventable, and to inaugurate and cooperate in any measure for the State it deems advisable. The Department of Health and Human Services may arrange for the examination of the eyes of blind and visually impaired persons and may secure and pay for medical and surgical treatment for these persons whenever in the judgment of a qualified ophthalmologist or optometrist the eyes of this person may be benefited by the treatment. (1935, c. 53, s. 7; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a); 2000-121, s. 6.)

Effect of Amendments. — Session Laws 2000-121, s. 6, effective July 14, 2000, substituted "visually impaired" for "partially blind," inserted "or optometrist," and made stylistic changes.

§ 111-8.1: Repealed by Session Laws 2000-121, s. 7, effective July 14, 2000.

Cross References. — For present similar provisions, see § 111-4(b).

§ 111-11. Definitions.

For the purposes of this Chapter, the following definitions apply:

(1) "Blind person" means a person who meets any of the following criteria:

a. Is totally blind.

b. Has central visual acuity that does not exceed 20/200 in the better eye with correcting lenses.

c. Has a visual field that subtends an angle no greater than 20 degrees at its widest diameter.

(2) "Visually impaired person" means a person whose vision with glasses is so limited as to prevent the performance of ordinary activity for which eyesight is essential. (1935, c. 53, s. 10; 1939, c. 124; 1971, c. 1215, s. 3; 2000-121, s. 8.)

Effect of Amendments. — Session Laws 2000-121, s. 8, effective July 14, 2000, rewrote the section.

§ 111-11.1. Jurisdiction of certain Divisions within the Department of Health and Human Services.

For the purpose of providing rehabilitative services to people who are visually impaired, the Division of Services for the Blind and the Division of Vocational Rehabilitation Services shall develop and enter into an agreement specifying which agency can most appropriately meet the specific needs of this client population. If the Divisions cannot reach an agreement, the Secretary of Health and Human Services shall determine which Division can most appropriately meet the specific needs of this client population. (2000-121, s. 9.)

Editor's Note. — Session Laws 2000-121, s. 37, made this section effective July 14, 2000.

§ 111-12.6. Disposition of funds deposited with or transferred to State Treasurer.

All funds required under this Article to be deposited with or which have been transferred to the State Treasurer by the Bureau of Employment of the Department of Health and Human Services, and all future net earnings and accumulations of the Bureau or its successor, other than the one hundred thousand dollars ($100,000) reserve fund provided for in G.S. 111-12.5, from whatever source shall be periodically, but not less frequently than annually, paid over to and retained by the State Treasurer as a separate fund or account. The funds deposited with the State Treasurer shall be invested and the income from the corpus shall inure to the sole benefit of the Department of Health and Human Services. The income and corpus shall be expended for services to and for the benefit of blind and visually impaired persons in North Carolina upon recommendation of the Commission for the Blind, by and with the approval of the Governor as the Director of the Budget. (1967, c. 1214; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a); 2000-121, s. 10.)

Effect of Amendments. — Session Laws 2000-121, s. 10, effective July 14, 2000, in the first sentence, deleted "heretofore" following "which have been" and substituted "provided for in G.S. 111-12.5" for "herein provided for," substituted "blind and visually impaired" for "visually handicapped" in the last sentence, and made three minor wording changes.

Article 2.

Aid to the Blind.

Effect of Amendments. — Session Laws 2000-121, s. 11, effective July 14, 2000, deleted "Needy" from the article heading.

§ 111-14. Application for benefits under Article; investigation and award by county commissioners.

Any person claiming benefits under this Article shall file with the commissioners of the county in which he or she is residing an application in writing, in duplicate, upon forms prescribed by the Department of Health and Human Services. This application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State who is actively engaged in the treatment of diseases of the human eye or by an optometrist, whichever the individual may select, stating that the applicant is blind. This application may be made on the behalf of any blind person by the Department of Health and Human Services or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person designated as its agent for this purpose and shall pass upon the application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, the board of county commissioners may take into consideration the facts set forth in the application and any other facts that are deemed necessary, and may at any time require an additional examination of the applicant's eyes by an ophthalmologist designated by the Department of Health and Human Services. When satisfied with the merits of the application, the board of county commissioners shall allow the application and grant to the applicant any proper relief according to the rules established by the Commission for the Blind. (1937, c. 124, s. 3; 1939, c. 124; 1951, c. 319, s. 1; 1957, c. 674; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a); 2000-121, s. 12.)

Effect of Amendments. — Session Laws 2000-121, s. 12, effective July 14, 2000, rewrote the section.

§ 111-15. Eligibility for relief.

Blind persons having the following qualifications shall be eligible for relief under the provisions of this Article:

(1) Repealed by Session Laws 2000-121, s. 13, effective July 14, 2000.

(2) Who are unable to provide for themselves the necessities of life and who have insufficient means for their own support and who have no relative or relatives or other persons in this State able to provide for them who are legally responsible for their maintenance; and

(3) Who, at the time his application is filed, is living in the State of North Carolina voluntarily with the intention of making his home in the State and not for a temporary purpose. [and]

(4) Who are not inmates of any charitable or correctional institution of this State or of any county or city thereof: Provided, that an inmate of such charitable institution may be granted a benefit in order to enable such person to maintain himself or herself outside of an institution; and

(5) Who are not, because of physical or mental condition, in need of continuing institutional care. Provided, that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind; except that, in making such determination, the State agency shall disregard such earned income as will enable said agency to receive the maximum grants from the federal government for such purpose. (1937, c. 124, s. 4; 1951, c. 319, s. 3; 1961, c. 666, s. 1; 1971, c. 1215, s. 1; 1981, c. 131; 2000-121, s. 13.)

Effect of Amendments. — Session Laws 2000-121, s. 13, effective July 14, 2000, repealed subdivision (1), pertaining to people whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential.

§ 111-16. Application for aid; notice of award; review.

Promptly after an application for aid is made to the board of county commissioners under this Article, the Department of Health and Human Services shall be notified of the application by mail by the county commissioners. One of the duplicate applications for aid made before the board of county commissioners shall be transmitted with this notice.

As soon as any award has been made or any application declined by the board of county commissioners, prompt notice in writing of the award or the declined application shall be forwarded by mail to the Department of Health and Human Services and to the applicant. This notice shall fully state the particulars of the award or the facts of denial. An applicant may appeal an award or denial pursuant to Article 3 of Chapter 150B of the General Statutes. (1937, c. 124, s. 5; 1971, c. 603, s. 1; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a); 2000-121, s. 14.)

Effect of Amendments. — Session Laws 2000-121, s. 14, effective July 14, 2000, rewrote the section.

§ 111-18.1. Award and assistance checks payable to decedents.

(a) In the event of the death of a recipient of an award made pursuant to G.S. 111-18 during or after the first day of the month for which the award was authorized to be paid, any check or checks in payment of such award made payable to the deceased recipient and not endorsed prior to the payee's death shall be delivered to the clerk of the superior court and be by him administered under the provisions of G.S. 28A-25-6.

(b) In the event of the death of a recipient of a cash payment service that was rendered as part of a program of public assistance for the blind or visually impaired, any check issued for the payment of that service made payable to that recipient, but not endorsed prior to the recipient's death, shall be returned to the issuing agency and made void. The issuing agency shall then issue a check payable to the provider of the service for the sum remaining due for this service, not to exceed the amount of the returned and voided check. (1979, c. 762, s. 2; 2000-121, s. 15.)

Effect of Amendments. — Session Laws 2000-121, s. 15, effective July 14, 2000, in (b), in the first sentence, deleted "service, as defined by regulation of the N.C. Commission for the Blind, which" following "of a cash payment" and substituted "impaired" for "handicapped" and made minor wording changes throughout the section.

§ 111-27. Department of Health and Human Services to promote employment of blind persons; vending stands on public property.

For the purpose of assisting blind persons to become self-supporting, the Department of Health and Human Services may carry on activities to promote the employment of blind persons, including the licensing and establishment of blind persons as operators of vending stands in public buildings. The Department of Health and Human Services may cooperate with the federal government in the furtherance of the Randolph-Sheppard Vending Stand Act, 20 U.S.C. §§ 107-107f, as amended, providing for the licensing of blind persons to operate vending stands in federal buildings, or any other act of Congress that may be enacted.

The board of county commissioners of each county and the commissioners or officials in charge of various State and municipal buildings may permit the operation of vending stands by blind persons on the premises of any State, county or municipal property under their respective jurisdictions. These operators shall be first licensed by the Department of Health and Human Services. Additionally, no vending stands may be operated unless, in the opinion of the commissions or officials having control and custody of the property, the vending stands may be properly and satisfactorily operated on the premises without undue interference with the use and needs of the premises or property for public purposes. (1939, c. 123; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a); 2000-121, s. 16.)

Effect of Amendments. — Session Laws 2000-121, s. 16, effective July 14, 2000, rewrote the section.

§ 111-27.1. Department of Health and Human Services authorized to conduct certain business operations.

For the purpose of assisting blind and visually impaired persons to become self-supporting the Department of Health and Human Services may carry on activities to promote the rehabilitation and employment of the blind and visually impaired, including employment in or the operation of various business enterprises suitable for the blind and visually impaired. The Executive Budget Act applies to the operation of these enterprises as to all appropriations made by the State to aid in the organization and the establishment of these businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind and visually impaired persons operating these businesses, and other expenses of these businesses from funds derived from local subscriptions and from the day-by-day operations are not subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement that apply to State funds but shall be supervised by the Department of Health and Human Services. All of the business operations under this law are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

Randolph-Sheppard vendors are not State employees. Blind licensees operating vending facilities under contract with the Department of Health and Human Services, Division of Services for the Blind, are independent contractors. (1945, c. 72, s. 2; 1971, c. 1025, s. 1; 1973, c. 476, s. 143; 1983, c. 867, s. 1; 1993, c. 257, s. 9; 1997-443, s. 11A.118(a); 2000-121, s. 17.)

Effect of Amendments. — Session Laws 2000-121, s. 17, effective July 14, 2000, inserted "and visually imparied" following "blind" throughout the first paragraph; in the second paragraph deleted "After September 30, 1983" from the beginning, and deleted "North Carolina" preceding "Department of Health and Human Services"; and made stylistic changes.

§ 111-28. Department of Health and Human Services authorized to receive grants for benefit of blind and visually impaired; use of information concerning blind persons.

The Department of Health and Human Services may receive grants-in-aid from the federal government or any State or federal agency for the purpose of rendering other services to the blind, visually impaired, and those in danger of becoming blind. All of these grants shall be paid into the State treasury and credited to the account of the Department of Health and Human Services, to be used in carrying out the provisions of this law.

The Commission for the Blind may adopt rules as may be required by the federal government or State or federal agency as a condition for receiving these federal funds, not inconsistent with the laws of this State.

The Department of Health and Human Services may enter into reciprocal agreements with public welfare agencies in other states regarding assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of assistance and services and in the study of the problems involved.

The Department of Health and Human Services may establish and enforce reasonable rules governing the custody, use and preservation of the records, papers, files, and communications of the Department.

It is unlawful, except for purposes directly connected with the administration of aid to the blind and visually impaired and in accordance with the rules of the Department of Health and Human Services, for any person to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the blind and visually impaired, directly or indirectly derived from the records, papers, files, or communications of the Department of Health and Human Services, the board of county commissioners, or the county social services department, or acquired in the course of the performance of official duties.

The Department of Health and Human Services may release to the Division of Motor Vehicles in the Department of Transportation and to the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the Division of Motor Vehicles and the Department of Revenue shall be treated by them as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of Chapters 20 and 105 of the General Statutes. The Department of Health and Human Services may also release to the North Carolina Library for the Blind and Physically Handicapped of the Department of Cultural Resources, the name and address of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information released to the North Carolina Library for the Blind and Physically Handicapped shall be treated as confidential for its use only and shall not be released to any person for commercial or political purposes or for any purpose not directly connected with providing information concerning services offered by the North Carolina Library for the Blind and Physically Handicapped. (1939, c. 124; 1941, c. 186; 1969, cc. 871, 982; 1973, c. 476, s. 143; 1989, c. 752, s. 141; 1997-443, s. 11A.118(a); 2000-121, s. 18.)

Effect of Amendments. — Session Laws 2000-121, s. 18, effective July 14, 2000, rewrote the section.

§ 111-28.1. Department of Health and Human Services authorized to cooperate with federal government in rehabilitation of blind and visually impaired.

The Department of Health and Human Services may adopt the necessary rules to cooperate with the federal government in the furtherance of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, 29 U.S.C. § 701, et seq., as amended, providing for the rehabilitation of the blind and visually impaired. (1945, c. 72, s. 1; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a); 2000-121, s. 19.)

Effect of Amendments. — Session Laws 2000-121, s. 19, effective July 14, 2000, rewrote the section.

Article 3.

Operation of Vending Facilities on State Property.

§ 111-41. Preference to blind persons in operation of vending facilities; responsibility of Department of Health and Human Services.

In order to promote the employment and the self-sufficiency of blind persons in North Carolina, State agencies shall upon the request of the Department of Health and Human Services give preference to blind persons in the operation of vending facilities on State property. The Department of Health and Human Services shall encourage and assist the operation of vending facilities by blind persons. (1973, c. 1280, s. 1; 1997-443, s. 11A.118(a); 2000-121, s. 20.)

Effect of Amendments. — Session Laws 2000-121, s. 20, effective July 14, 2000, substituted "blind persons" for "visually handicapped persons" throughout the section.

§ 111-42. Definitions as used in this Article.

(a) "Regular vending facility" means a vending facility where food preparation or cooking is not done on the State property.

(b) "State agency" means department, commission, agency or instrumentality of the State.

(c) "State property or State building" means building and land owned, leased, or otherwise controlled by the State, exclusive of schools, colleges and universities, the North Carolina State Fair, and the State Legislative Building.

(d) "Vending facility" includes a snack bar, cafeteria, restaurant, cafe, concession stand, vending stand, cart service, or other facilities at which food, drinks, novelties, newspapers, periodicals, confections, souvenirs, tobacco products or related items are regularly sold.

(e) Repealed by Session Laws 2000-121, s. 21, effective July 14, 2000. (1973, c. 1280, s. 1; 2000-121, s. 21.)

Effect of Amendments. — Session Laws 2000-121, s. 21, effective July 14, 2000, repealed subsection (e), defining "visually handicapped."

§ 111-43. Installation of coin-operated vending machines.

In locations where the Department of Health and Human Services determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues to support a blind vendor or due to the lack of qualified blind applicants, the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin-operated vending machines for the location. Profits from coin-operated vending machines secured by the Department of Health and Human Services shall be used by the Department for the support of programs that enable blind and visually impaired people to live more independently, including medical, rehabilitation, independent living, and educational services offered by the Division of Services for the Blind. (1973, c. 1280, s. 1; 1991, c. 689, s. 221.4(a); 1991 (Reg. Sess., 1992), c. 984, s. 1; 2000-121, s. 22.)

Effect of Amendments. — Session Laws 2000-121, s. 22, effective July 14, 2000, inserted "of Health and Human Services" twice and inserted "and visually impaired" near the end.

§ 111-44. Location and services provided by State agency.

If the Department of Health and Human Services determines that a location is suitable for the operation of a vending facility by a blind person, the State agency with authority over the location shall provide proper space, plumbing, lighting, and electrical outlets for the vending facility in the original planning and construction, or in the alteration and renovation of the present location. The State agency shall provide necessary utilities, janitorial service, and garbage disposal for the operation of the vending facility. Space and services for the vending facilities shall be provided without charge. (1973, c. 1280, s. 1; 1997-443, s. 11A.118(a); 2000-121, s. 23.)

Effect of Amendments. — Session Laws 2000-121, s. 23, effective July 14, 2000, substituted "blind" for "visually handicapped" and made minor wording changes throughout the section.

§ 111-45. Duty of State agency to inform the Department of Health and Human Services.

It shall be the duty of the State agencies to inform the Department of Health and Human Services of existing and prospective locations for vending facilities and coin-operated vending machines and to adopt rules, upon request of the Department, to promote the successful operation of the vending facilities of the blind. (1973, c. 1280, s. 1; 2000-121, s. 24.)

Effect of Amendments. — Session Laws 2000-121, s. 24, effective July 14, 2000, inserted "of Health and Human Services" in the section heading and in the text of the section, substituted "adopt rules, upon request of the Department" for "prescribe regulation (upon request of the Department)," and substituted "blind" for "visually handicapped."

§ 111-46. Vending facilities operated by those other than blind persons.

Where vending facilities on State property are operated by those other than blind persons on the date of enactment of this Article, the contract of these vending facilities shall not be renewed or extended unless the Secretary of the Department of Health and Human Services is notified of the proposed renewal or extension and the Secretary determines within 30 days of this notification that the vending facilities are not, or cannot become, suited for operation by the blind. If the Secretary of the Department of Health and Human Services within 30 days of the date of this notification fails to provide for the operation of the vending facilities by the blind, the existing contract may be renewed or extended. (1973, c. 1280, s. 1; 1997-443, s. 11A.118(a); 2000-121, s. 25.)

Effect of Amendments. — Session Laws 2000-121, s. 25, effective July 14, 2000, substituted "blind" for "visually handicapped" throughout, made stylistic changes, and substituted a gender-neutral term.

Article 4.

Operation of Highway Vending Facilities on North Carolina Highways.

§ 111-49. Definitions as used in this Article.

(a) "Automatic vending" means a coin, currency, token, ticket, or credit card operated machine that dispenses food, drinks, or sundries.

(b) "Blind vendor" means a blind person who has been licensed by the Division of Services for the Blind to operate a vending stand in a public building.

(c) "Highway vending facilities" means automatic vending operations located on North Carolina highways in Welcome Centers and rest areas designated by the State. (1991 (Reg. Sess., 1992), c. 984, s. 3; 2000-121, s. 26.)

Effect of Amendments. — Session Laws 2000-121, s. 26, effective July 14, 2000, deleted "as specified in G.S. 105-249(b)" following "blind person" in (b).

§ 111-50. Operations of highway vending.

(a) In locations on North Carolina highways where the Department of Health and Human Services determines that automatic vending is suitable, the Department shall authorize the Division of Services for the Blind to contract with blind vendors in the operation of highway vending facilities. The contracts shall be reviewed and renegotiated by the Division every two years and shall be reviewed by the Transfer and Promotion Committee. The Commission for the Blind shall adopt rules necessary to govern the operations. The highway vending program shall be a part of the Business Enterprises Program operated under the Randolph-Sheppard Act, 20 U.S.C. § 107a.

(b) Repealed by Session Laws 2000, c. 121, s. 27, effective July 14, 2000.

(c) The Commission for the Blind may adopt rules to establish applicable set-aside rates for the Business Enterprises Program. The Commission shall only develop rules authorized by this subsection with the active participation of the Elected Committee of Vendors. (1991 (Reg. Sess., 1992), c. 984, s. 3; 1997-443, s. 11A.118(a); 2000-121, s. 27.)

Editor's Note. — Session Laws 2000-121, s. 35, provides: "The Commission for the Blind shall not exercise the authority granted under G.S. 111-50(c), as enacted by Section 27 of this act, until after such time as the Rehabilitation Services Administration of the United States Department of Education has designated the Commission as part of the State Licensing Agency for the Business Enterprises Program. Until such time as the Commission for the Blind adopts permanent rules to establish set-aside rates for the Business Enterprise Program pursuant to G.S. 111-50(c), as enacted by Section 27 of this act, profits returned to the Division of Services for the Blind shall be based upon operator net income and determined as follows:

"(1) The Division shall charge seventeen percent (17%) set-aside on operator net income up to two and one-half times the average operator income for the previous State fiscal year.

"(2) The Division shall charge fifty percent (50%) set-aside on operator net income over two and one-half times the average operator income for the previous State fiscal year."

Effect of Amendments. — Session Laws 2000-121, s. 27, effective July 14, 2000, deleted former subsection (b) pertaining to profits returned to the Division; and added subsection (c).

Chapter 113.

Conservation and Development.

SUBCHAPTER II. STATE FORESTS AND PARKS.

Article 2.

Acquisition and Control of State Forests and Parks.

§ 113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States; leases for recreational purposes; rules governing public use.

Cross References. — As to power of the Department of Administration to acquire conservation lands not included in the State Parks System, see § 113-34.1.

§ 113-34.1. Power to acquire conservation lands not included in the State Parks System.

The Department of Administration may acquire and allocate to the Department of Environment and Natural Resources for management by the Division of Parks and Recreation lands that the Department of Environment and Natural Resources finds are important for conservation purposes but which are not included in the State Parks System. Lands acquired pursuant to this section are not subject to Article 2C of Chapter 113 of the General Statutes and may be traded or transferred as necessary to protect, develop, and manage the Mountains to Sea State Park Trail, other State parks, or other conservation lands. This section does not expand the power granted to the Department of Environment and Natural Resources under G.S. 113-34(a) to acquire land by condemnation. (2000-157, s. 3.)

Editor's Note. — Session Laws 2000-157, s. 4, made this section effective August 2, 2000.

Session Laws 2000-157, ss. 1 and 2, authorizes the Department of Environment and Natural Resources to add the Mountains to Sea State Park Trail to the State Parks System as provided in G.S. 113-44.14(b), to be comprised only of those lands or easements which are or will be allocated for management to the Division of Parks and Recreation for this purpose. The Division is to promote, encourage, and facilitate the establishment of dedicated connecting trails through lands managed by other governmental agencies and nonprofit organizations in order to form a continuous trail across the State. At least five business days prior to initiating condemnation proceedings to acquire land for the Mountains to Sea State Park Trail, the Department of Administration is to notify the board of commissioners of the county in which the land is located and, if the land is located in a municipality, the board of commissioners of the municipality. Unless a governing body of a county or municipality notifies the Department of Administration within five business days that it objects to the proceedings, the Department of Administration may initiate the proceedings. The Department of Administration is not to initiate proceedings if a governing body of a county or municipality notifies the Department of Administration within five business days that it objects to the proceedings.

Article 2C.

State Parks Act.

§ 113-44.7. Short title.

Cross References. — As to power of the Department of Administration to acquire conservation lands not included in the State Parks System, see § 113-34.1.

§ 113-44.14. Additions to and deletions from the State Parks System.

Editor's Note. —

Session Laws 2000-17, s. 1, effective June 22, 2000, authorizes the Department of Environment and Natural Resources to add Bullhead Mountain State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

Session Law 2000-102, s. 1, effective July 11, 2001, authorizes the Department of Environment and Natural Resources to add Lea Island State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

Session Laws 2000-157, ss. 1 and 2, effective August 2, 2000, authorizes the Department of Environment and Natural Resources to add the Mountains to Sea State Park Trail to the State Parks System as provided in G.S. 113-44.14(b), to be comprised only of those lands or easements which are or will be allocated for management to the Division of Parks and Recreation for this purpose. The Division is to promote, encourage, and facilitate the establishment of dedicated connecting trails through lands managed by other governmental agencies and nonprofit organizations in order to form a continuous trail across the State. At least five business days prior to initiating condemnation proceedings to acquire land for the Mountains to Sea State Park Trail, the Department of Administration is to notify the board of commissioners of the county in which the land is located and, if the land is located in a municipality, the board of commissioners of the municipality. Unless a governing body of a county or municipality notifies the Department of Administration within five business days that it objects to the proceedings, the Department of Administration may initiate the proceedings. The Department of Administration is not to initiate proceedings if a governing body of a county or municipality notifies the Department of Administration within five business days that it objects to the proceedings.

Article 4.

Protection and Development of Forests; Fire Control.

§ 113-55.2. Warning tickets for violations of the forest laws.

(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the Secretary may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the Secretary within the requirements of this section. These criteria are exempt from Article 2A of Chapter 150B of the General Statutes.

(b) No warning ticket may be issued unless all of the following conditions are met:

(1) The forest ranger or the forest law-enforcement officer must be convinced that the offense was not committed intentionally.

(2) The offense is not one, or a type of offense, for which the Secretary has prohibited the issuance of warning tickets.

(3) At the time of the violation it was not reasonably foreseeable that the conduct of the offender could result in any significant destruction of forests or woodlands or constitute a hazard to the public.

(c) A warning ticket may not be issued if the offender has previously been charged with, or issued a warning ticket for, the same or a similar offense within the preceding three years. A list of persons who have been issued warning tickets under this section within the preceding three years shall be maintained and periodically updated by the Secretary.

(d) This section does not entitle any person who has committed an offense to the right to be issued a warning ticket, and the issuance of a warning ticket does not prohibit the later initiation of criminal prosecution for the same offense for which the warning ticket was issued. (1983, c. 327, s. 6; 1987, c. 827, s. 6; 2000-189, s. 8.)

Effect of Amendments. — Session Laws 2000-189, s. 8, effective August 2, 2000, deleted "but shall be filed in accordance with Article 5 of that Chapter" following "General Statutes" in subsection (a).

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

Article 12.

General Definitions.

§ 113-130. Definitions relating to activities of public.

OPINIONS OF ATTORNEY GENERAL

For a discussion of whether a person's participation in a fishing tournament can constitute a sale of fish requiring an endorsement to sell fish, see opinion of Attorney General to Preston P. Pate, Jr., Director Division of Marine Fisheries, 1998 N.C.A.G. 15 (3/4/98).

Article 13.

Jurisdiction of Conservation Agencies.

§ 113-131. Resources belong to public; stewardship of conservation agencies; grant and delegation of powers; injunctive relief.

OPINIONS OF ATTORNEY GENERAL

Public Trust Rights. — A proposed amendment to a lake's existing conservation easement which would authorize a town to reconstruct a breached dam and allow use of the recreated lake as a public park would not operate to adversely affect any public trust rights under this section and § 1-45.1. See opinion of Attorney General to Mr. Thomas Ashe Lockhart, Jr., The Sanford Holshouser Law Firm, 1998 N.C.A.G. 51 (12/12/98).

§ 113-133. Abolition of local coastal fishing laws.

OPINIONS OF ATTORNEY GENERAL

A town municipal ordinance prohibiting the location of gill nets where they are expressly permitted by State law violates § 160A-174(b)(2) and is, therefore, invalid to the extent of the conflict with State law. See opinion of Attorney General to Preston P. Pate, Jr., Director, Division of Marine Fisheries, 1998 N.C.A.G. 31 (7/22/98).

§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic Ocean.

OPINIONS OF ATTORNEY GENERAL

The Marine Fisheries Commission has the power to regulate North Carolina vessels in the Exclusive Economic Zone (EEZ), and the Marine Patrol has the power to cite those vessels in the EEZ; the Marine Patrol has both subject matter jurisdiction and territorial jurisdiction over State registered vessels in the EEZ, subject to certain restrictions. See opinion of Attorney General to Colonel B. M. Rivenbark, N.C. Marine Patrol Division of Marine Fisheries, 1998 N.C.A.G. 16 (3/9/98).

§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors.

OPINIONS OF ATTORNEY GENERAL

The Marine Fisheries Commission has the power to regulate North Carolina vessels in the Exclusive Economic Zone (EEZ), and the Marine Patrol has the power to cite those vessels in the EEZ; the Marine Patrol has both subject matter jurisdiction and territorial jurisdiction over State registered vessels in the EEZ, subject to certain restrictions. See opinion of Attorney General to Colonel B. M. Rivenbark, N.C. Marine Patrol Division of Marine Fisheries, 1998 N.C.A.G. 16 (3/9/98).

Article 13A.

Clean Water Management Trust Fund.

§ 113-145.3. Clean Water Management Trust Fund: established.

OPINIONS OF ATTORNEY GENERAL

Environmental Impact Statements. — The preparation of an Environmental Impact Statement (EIS) may be included in funding for a project that otherwise qualifies for grant funds, although the preparation of an EIS is not, in itself, one of the authorized uses of Clean Water Management Trust Fund moneys under this section. See opinion of Attorney General to Mr. David McNaught, Director, Clean Water Management Trust Fund, 1998 N.C.A.G. 11 (2/20/98).

Construction of a regional wastewater system may be funded with Clean Water Management Trust Fund moneys only if the construction meets the criteria set out in subdivisions (c)(5) or (6) of this section. See opinion of Attorney General to Mr. David McNaught, Director, Clean Water Management Trust Fund, 1998 N.C.A.G. 11 (2/20/98).

§ 113-145.4. Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement.

OPINIONS OF ATTORNEY GENERAL

Eligible Grant Recipients. — A local band of Indians is not eligible to receive grants under the Clean Water Management Trust Fund. See opinion of Attorney General to David McNaught, Executive Director, Clean Water Management Trust Fund, 1998 N.C.A.G. 26 (6/3/98).

Article 14A.

Coastal and Estuarine Commercial Fishing Licenses.

[Article 14A expires September 1, 2003]

§ 113-168.1. (Expires September 1, 2003) General provisions governing licenses and endorsements.

Editor's Note. —

Session Laws 1999-209, s. 4(b), as amended by Session Laws 2000-142, s. 1, effective August 2, 2000, provides that a person who holds a SCFL or RSCFL may take crabs as part of a commercial fishing operation from the coastal fishing waters of North Carolina.

Session Laws 2000-142, s. 2, provides that between August 2, 2000, and ending October 1, 2000, a person who holds an interim crab license established under Session Laws 1999-209, s. 4, may apply for a Standard Commercial Fishing License (SCFL) from the pool of available licenses established under Session Laws 1997-400, s. 5.2, as amended by Session Laws 1998-225, s. 4.24, as provided in this section. Notwithstanding Session Laws 1997-400, s. 5.2(c), (e), and (f), as amended by Session Laws 1998-225, s. 4.24, the Marine Fisheries Commission shall increase the number of SCFLs in the pool of available licenses to the extent necessary to allow the Division of Marine Fisheries to issue a SCFL to each person who holds an interim crab license; who applies for a SCFL between August 2, 2000 and October 1, 2000; and who qualifies for a SCFL under the eligibility criteria established pursuant to Session Laws 1997-400, s. 5.2(h), as amended by Session Laws 1998-225, s. 4.24. The Division of Marine Fisheries may issue only one SCFL to a person under this section regardless of the number of interim crab licenses the person holds. The duration of and fee for a SCFL issued pursuant to this section shall be as provided in G.S. 113-168.1 and G.S. 113-168.2, regardless of when the SCFL is issued.

§ 113-168.2. (Expires September 1, 2003) Standard Commercial Fishing License.

Editor's Note. —
Session Laws 1999-209, s. 4(b), as amended by Session Laws 2000-142, s. 1, effective August 2, 2000, provides that a person who holds a SCFL or RSCFL may take crabs as part of a commercial fishing operation from the coastal fishing waters of North Carolina.

Session Laws 2000-142, s. 2, provides that between August 2, 2000, and ending October 1, 2000, a person who holds an interim crab license established under Session Laws 1999-209, s. 4, may apply for a Standard Commercial Fishing License (SCFL) from the pool of available licenses established under Session Laws 1997-400, s. 5.2, as amended by Session Laws 1998-225, s. 4.24, as provided in this section. Notwithstanding Session Laws 1997-400, s. 5.2(c), (e), and (f), as amended by Session Laws 1998-225, s. 4.24, the Marine Fisheries Commission shall increase the number of SCFLs in the pool of available licenses to the extent necessary to allow the Division of Marine Fisheries to issue a SCFL to each person who holds an interim crab license; who applies for a SCFL between August 2, 2000 and October 1, 2000; and who qualifies for a SCFL under the eligibility criteria established pursuant to Session Laws 1997-400, s. 5.2(h), as amended by Session Laws 1998-225, s. 4.24. The Division of Marine Fisheries may issue only one SCFL to a person under this section regardless of the number of interim crab licenses the person holds. The duration of and fee for a SCFL issued pursuant to this section shall be as provided in G.S. 113-168.1 and G.S. 113-168.2, regardless of when the SCFL is issued.

§ 113-168.4. (Expires September 1, 2003) Sale of fish.

OPINIONS OF ATTORNEY GENERAL

For a discussion of whether a person's participation in a fishing tournament can constitute a sale of fish requiring an endorsement to sell fish, see opinion of Attorney General to Preston P. Pate, Jr., Director Division of Marine Fisheries, 1998 N.C.A.G. 15 (3/4/98).

§ 113-169.1. (Expires September 1, 2003) Permits for gear, equipment, and other specialized activities authorized.

The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams. (1997-400, s. 5.1; 2000-172, s. 6.1.)

Editor's Note. — Session Laws 2000-172, s. 6.2, directs that any fee established by the Marine Fisheries Commission pursuant to G.S. 113-169.1, as amended by Section 6.1 of the act, shall expire July 1, 2000.

Session Laws 2000-172, s. 8.2, contains a severability clause.

Effect of Amendments. — Session Laws 2000-172, s. 6.1, effective retroactively to July 1, 2000, deleted the former last sentence.

§ 113-173. (Expires September 1, 2003) Recreational Commercial Gear License.

(a) License Required. — Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing

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waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational possession limits. It is unlawful for any person licensed under this section or fishing under a RCGL to possess fish in excess of recreational possession limits.

(b) Sale of Fish Prohibited. — It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (j) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. —

(1) The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(2) A person who holds a RCGL may use up to 100 yards of gill net to take fish for recreational purposes. Two persons who each hold a RCGL and who are fishing from a single vessel may use up to a combined 200 yards of gill net to take fish for recreational purposes. No more than 200 yards of gill net may be used to take fish for recreational purposes from a single vessel regardless of the number of persons aboard the vessel who hold a RCGL.

(d) Purchase; Renewal. — A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. — The provisions of G.S 113-168.1(h) apply to this section.

(f) Duration; Fees. — The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. — It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. — A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. — The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. —

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or

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guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons.

(4) A person using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL.

(5) A person may take fish for recreational purposes by means of a gig without holding a RCGL. (1997-400, s. 5.1; 1997-456, s. 55.7; 1998-225, s. 4.21; 1999-209, s. 9; 2000-139, s. 1.)

Editor's Note. —
Session Laws 2000-139, s. 2, directs the Joint Legislative Commission on Seafood and Aquaculture to study issues related to the appropriate amount of gill net that should be authorized for use under a Recreational Commercial Gear License and to report its findings and recommendations, including any legislative proposals, to the 2001 General Assembly.

Effect of Amendments. —
Session Laws 2000-139, s. 1, effective July 21, 2000, designated the existing paragraph in subsection (c) as subdivision (c)(1) and added subdivision (c)(2).

Article 15.

Regulation of Coastal Fisheries.

§ 113-182. Regulation of fishing and fisheries.

OPINIONS OF ATTORNEY GENERAL

The Marine Fisheries Commission has the power to regulate North Carolina vessels in the Exclusive Economic Zone (EEZ), and the Marine Patrol has the power to cite those vessels in the EEZ; the Marine Patrol has both subject matter jurisdiction and territorial jurisdiction over State registered vessels in the EEZ, subject to certain restrictions. See opinion of Attorney General to Colonel B. M. Rivenbark, N.C. Marine Patrol Division of Marine Fisheries, 1998 N.C.A.G. 16 (3/9/98).

Article 16.

Cultivation of Shellfish.

§ 113-209. Taking polluted shellfish at night or with prior conviction forbidden; penalty.

CASE NOTES

Cited in Aycock v. Padgett, 134 N.C. App. 164, 516 S.E.2d 907 (1999).

Article 17.

Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.

§ 113-221. Rules; proclamations; emergency Commission meetings.

(a) Chapter 150B of the General Statutes governs the adoption of rules under this Article, other than proclamations issued under this Article. Chapter 150B does not apply to proclamations issued under this Article.

(b) Upon purchasing a license, each licensee shall be given a copy of the rules concerning the activities authorized by the license.

(c) The Fisheries Director shall notify licensees of a new rule or change to a rule by sending each licensee either a newsletter containing the text of the rule or change or an updated codification of the rules of the Marine Fisheries Commission that contains the new rule or change.

(d) Unless there are overriding policy considerations involved, any rule of the Marine Fisheries Commission which will in the judgment of the Marine Fisheries Commission result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment should be given such a future effective date as to minimize undue potential economic loss to fishermen. Whether or not any provision may cause potential economic loss and whether or not a future effective date should be set is a matter within the complete discretion of the Marine Fisheries Commission. The Marine Fisheries Commission need not set any future effective date more than two years in advance of the passage of any rule.

(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. It is a defense to an enforcement action for a violation of a proclamation that a licensee was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight.

(e1) Pursuant to the request of five or more members of the Marine Fisheries Commission, its chairman may call an emergency meeting of the Commission to review: (1) a proposed issuance or issuance of proclamations under the authority delegated to the Fisheries Director pursuant to (e) of this section, except those proclamations issued for reasons of public health; or (2) the need to issue a proclamation to allow the taking of certain fisheries resources in areas not opened through proclamations issued by the Fisheries Director. At least 48 hours prior to any such meeting, a public announcement of the meeting shall be issued that describes the action requested by the members of the Commission; and the Department must make every reasonable effort to give actual notice of the meeting to persons who may be affected thereby. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may (1) approve, cancel, or modify the proposed proclamation or issued proclamation under review; or (2) direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources.

The variable conditions that affect such resource management decisions require that these emergency meetings and any resulting orders by the Commission be exempt from the provisions of Article 2A of Chapter 150B. The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious.

(f) All persons who may be affected by them are under a duty to keep themselves informed of current rules of the Marine Fisheries Commission and proclamations of the Fisheries Director. It is no defense in any criminal prosecution for the defendant to show that he in fact received no notice of a particular rule or proclamation. In any prosecution for violation of the provisions of any rule or proclamation, or in which proof of matter contained in a rule or proclamation is involved, the Department is deemed to have complied with publication procedures and the burden is on the defendant to show by the greater weight of the evidence substantial failure of compliance by the Department with the required publication procedures.

(g) Every court must take judicial notice of any codification of rules issued by the Fisheries Director within two years preceding the date of the offense charged or transaction in issue. In the absence of any indication to the contrary, such codifications are to be deemed accurate and current statements of the text of the rules in question and it is incumbent upon any person asserting that a relevant portion of the codified text is inaccurate, or has been amended or deleted, to satisfy the court as to the text of the rules which is in fact properly applicable.

(h) Repealed by Session Laws 1983, c. 221, s. 1. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C.S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1134, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, ss. 28, 86; c. 1331, s. 3; 1975, 2nd Sess., c. 983, s. 70; 1979, c. 388, s. 6; 1983, cc. 221, 619, 620; 1987, c. 641, ss. 7, 19; c. 827, s. 7; 1997-400, s. 4.3; 1998-225, s. 3.8; 2000-189, s. 9.)

Effect of Amendments. —
Session Laws 2000-189, s. 9, effective August 2, 2000, substituted "Article 2A" for "Articles 2 and 5" in the second paragraph in subsection (e1).

§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The Department shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(c1) The Coastal Resources Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider all of the following:

(1) The size of the development.
(2) The impact of the development on areas of environmental concern.
(3) How often the class of development is carried out.
(4) The need for on-site oversight of the development.
(5) The need for public review and comment on individual development projects.

(c2) General permits may be issued by the Commission as rules under the provisions of G.S. 113A-118.1. Individual development carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of this section. The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues. The variance, appeals, and enforcement provisions of this

Article shall apply to any individual development projects undertaken under a general permit.

(d) An applicant for a permit, other than an emergency permit, shall send a copy of his application to the owner of each tract of riparian property that adjoins that of the applicant. The copy shall be served by certified mail or, if the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, by publication in accordance with the rules of the Commission. An owner may file written objections to the permit with the Department for 30 days after he is served with a copy of the application. In the case of a special emergency dredge or fill permit the applicant must certify that he took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in (e) of this section, upon the express understanding from the applicant that he will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 and the granting of variances under this section and G.S. 113A-120.1 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary properly to consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may elaborate by rule upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the Commission makes a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit.

(g) G.S. 113A-122 applies to an appeal of a permit decision under subsection (f).

(h) Repealed by Session Laws 1987, c. 827, s. 105.

(h1) All construction and maintenance dredgings of beach-quality sand may be placed on the downdrift beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift beaches.

(i) Subject to subsection (h1) of this section, all materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a Class 2 misdemeanor. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. A notice to cease shall be served personally or by certified mail.

(*l*) The Secretary may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Secretary, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and State-owned lakes within the

State, and the work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the Department and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130A-346 through G.S. 130A-349. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

(1) "State-owned lakes" include man-made as well as natural lakes.

(2) "Estuarine waters" means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Wildlife Resources Commission, within the meaning of G.S. 113-129.

(3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass *(Spartina alterniflora)*, Black Needlerush *(Juncus roemerianus)*, Glasswort *(Salicornia spp.)*, Salt Grass *(Distichlis spicata)*, Sea Lavender *(Limonium spp.)*, Bulrush *(Scirpus spp.)*, Saw Grass *(Cladium jamaicense)*, Cattail *(Typha spp.)*, Salt-Meadow Grass *(Spartina patens)*, and Salt Reed-Grass *(Spartina cynosuroides)*. (1969, c. 791, s. 1; 1971, c. 1159, s. 6; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; c. 1331, s. 3; 1975, c. 456, ss. 1-7; 1977, c. 771, s. 4; 1979, c. 253, ss. 1, 2; 1983, c. 258, ss. 1-3; c. 442, s. 2; 1987, c. 827, s. 105; 1989, c. 727, s. 107; 1993, c. 539, s. 844; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 777, s. 6(a), (b); 1995, c. 509, s. 55.1(a)-(c); 2000-172, ss. 3.1, 3.2.)

Editor's Note. —
Session Laws 2000-172, s. 8.2, contains a severability clause.

Effect of Amendments. — Session Laws 2000-172, ss. 3.1 and 3.2, effective August 2, 2000, added "all of the following" in subsection (c1); designated the existing second paragraph in subsection (c1) as present subsection (c2); substituted "G.S. 113A-118.1" for "G.S. 113A-107" in subsection (c2); inserted "and the granting of variances under this section and G.S. 113A-120.1" in the sixth sentence in subsection (e); and made stylistic changes.

Article 21.

Licenses and Permits Issued by the Wildlife Resources Commission.

§ 113-275. General provisions respecting licenses and permits.

(a) The Wildlife Resources Commission is authorized to make agreements with other jurisdictions as to reciprocal honoring of licenses in the best interests of the conservation of wildlife resources.

(a1) Notwithstanding the fees specified for nonresident individuals by G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, 113-272.2, and 113-273, if the Wildlife Resources Commission finds that a state has a nonresident license fee related to wildlife resources that exceeds the fee for a comparable nonresident license in North Carolina, the Wildlife Resources Commission may, by resolution in official session, increase the nonresident license fee applicable to citizens of that state to an amount equal to the fee a North Carolina resident is required to pay in that state.

The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection is not subject to the provisions of Article 2A of Chapter 150B of the General Statutes. The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection becomes effective on the date specified by the Wildlife Resources Commission.

(b) Every license issued under the provisions of this Article is effective beginning upon its date of issuance unless the license expressly provides to the contrary, in accordance with rules of the Wildlife Resources Commission and such administrative authority to set future effective dates in particular types of cases as may be delegated by the Wildlife Resources Commission to responsible employees or agents.

(b1) No hunting or fishing license issued to a resident under the provisions of G.S. 113-270.1C, 113-270.1D, 113-270.2, 113-270.3, 113-271, or 113-272 becomes invalid for use during the term for which it is issued by reason of a removal of the residence of the licensee to another state.

(c) Every license issued under the provisions of this Article must be sold for the full prescribed amount notwithstanding that a portion of the prescribed license period may have elapsed prior to the license application.

(c1) Upon receipt of a proper application together with a fee of two dollars ($2.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it.

(d) In implementing the sale and distribution of licenses issued under this Article, the Wildlife Resources Commission may require license applicants to disclose such information as necessary for determining the applicant's eligibility for a particular license. Such information as deemed desirable to assist in enforcement of license requirements may be required to be recorded on the face of any license. Fixing the form of the license may be by reasonable administrative directive, and requirements as to such form need not be embodied in rules of the Wildlife Resources Commission in order to be validly required.

(e) Where employees of the Wildlife Resources Commission sell licenses of a type also sold through license agents, such employees must sell the licenses for the full amount and remit such full amount to the Wildlife Resources Commission without any deduction of the stipulated license agent's fee.

(f) Except as otherwise specifically provided by statute or except as the Wildlife Resources Commission may by rule prescribe to the contrary:

(1) All licenses and permits under this Article must be kept ready at hand by or about the person of individual licensees and permittees while engaged in the regulated operations;

(2) All licenses and permits under this Article are nontransferable; and

(3) All individuals engaged in operations subject to license or permit requirements must have an individual license or permit — except where such individuals are in the employ of and under the supervision of someone who has the license or permit or acceptable evidence of the same at hand and the activity is one for which a person not an individual may acquire a license.

(g) It is unlawful to buy, sell, lend, borrow, or in any other way transfer or receive or attempt to do any such things with respect to any nontransferable license or permit for the purpose of circumventing the requirements of this Article.

(h) It is unlawful for any person engaged in regulated operations under this Article to refuse to exhibit or display any required license, permit, or identification upon the request of any employee or agent of the Wildlife Resources Commission or of any officer authorized to enforce the provisions of this Article.

(i) It is unlawful to refuse to comply with any provisions of this Article or of rules and administrative requirements reasonably promulgated under the authority of this Article.

(j) It is a Class 1 misdemeanor for any person:

(1) Knowingly to engage in any activity regulated under this Article with an improper, false, or altered license or permit;

(2) Knowingly to make any application for a license or permit to which he is not entitled;

(3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this Article; or

(4) To counterfeit, alter, or falsify any application, license, or permit under this Article.

(k) A person may use a bow and arrow to take nongame fish in inland and joint fishing waters subject to any applicable rule of the Wildlife Resources Commission regarding seasons, creel limits, type of weapon or subsidiary gear, or any other restriction necessary for the conservation of wildlife under the authority of the following licenses:

(1) All of the combination hunting and fishing licenses issued pursuant to G.S. 113-270.1C;

(2) All of the sportsman licenses issued pursuant to G.S. 113-270.1D;

(3) The hunting licenses issued pursuant to G.S. 113- 270.2(c)(1), (2), (3), (5), and (6);

(4) The hook-and-line fishing licenses issued pursuant to G.S. 113-271(d)(1), (2), (3), (4), (5), (6), (8), and (9); and

(5) All of the special device fishing licenses issued pursuant to G.S. 113-272.2. (1929, c. 335, ss. 6, 10, 11; 1945, c. 567, ss. 5, 6; 1961, c. 329; 1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1; 1981, c. 620, ss. 7, 8; 1987, c. 745, s. 1; c. 827, s. 98; 1993, c. 539, s. 855; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 684, s. 7; 1995, c. 36, s. 1; 2000-189, s. 10.)

Effect of Amendments. — Session Laws 2000-189, s. 10, effective August 2, 2000, in the second paragraph in subsection (a1), substituted "Article 2A" for "Article 2" and deleted "Notwithstanding the provisions of G.S. 150B-59(a)" following "General Statutes."

Article 23.

Administrative Provisions; Regulatory Authority of Wildlife Resources Commission.

§ 113-306. Administrative authority of Wildlife Resources Commission; disposition of license funds; delegation of powers; injunctive relief.

CASE NOTES

Condemnation of Land Interest. — State had express statutory authority, and its statement of public use was sufficient, to condemn defendant's one-fifth land interest, held as tenant in common with State, as necessary and convenient for the operation and maintenance of government-owned impoundments. State v. Coastland Corp., 134 N.C. App. 269, 517 S.E.2d 655 (1999), cert. denied, 351 N.C. 111, — S.E.2d — (1999).

Chapter 113A.

Pollution Control and Environment.

Article 1.

Environmental Policy Act.

§ 113A-4. Cooperation of agencies; reports; availability of information.

OPINIONS OF ATTORNEY GENERAL

Environmental Impact Statements. — Neither the development of a fishery management plan nor the subsequent adoption of rules to implement the plan is an "action" involving the expenditure of public monies or use of public lands within the meaning of the North Carolina Environmental Policy Act, and therefore does not require preparation of an environmental document pursuant to this section. See opinion of Attorney General to Preston P. Pate, Jr., Director Division of Marine Fisheries, 1998 N.C.A.G. 13 (2/25/98).

§ 113A-9. Definitions.

Editor's Note. —
Session Laws 1999-463, s. 4 authorizes every State agency to adopt temporary rules necessary to implement the provisions of the act, the Hurricane Floyd Recovery Act of 1999, and provides that notwithstanding § 150B-21.1 (a)(2) and 26 NCAC 2C.0102(11), the authority to adopt temporary rules to implement the provisions of the act shall continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules. Notwithstanding § 150B-21.1 (d), a temporary rule adopted to implement the provisions of the act shall specify the date on which the rule will expire and shall continue in effect until that date. Any agency that adopts a temporary rule to implement the provisions of the act shall report the text of the rule and the agency's written statement of its findings of the need for the rule to the Joint Legislative Administrative Procedure Oversight Committee within 30 days of the adoption of the temporary rule. Section 4 applies to the adoption of temporary rules by the Department of Administration under § 113A-11 (a) and to the adoption of temporary rules that establish minimum criteria by any State agency, as defined in § 113A-9, under § 113A-11 (b).

§ 113A-11. Adoption of rules.

Editor's Note. —
Session Laws 1999-463, s. 4 authorizes every State agency to adopt temporary rules necessary to implement the provisions of the act, the Hurricane Floyd Recovery Act of 1999, and provides that notwithstanding § 150B-21.1 (a)(2) and 26 NCAC 2C.0102(11), the authority to adopt temporary rules to implement the provisions of the act shall continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules. Notwithstanding § 150B-21.1 (d), a temporary rule adopted to implement the provisions of the act shall specify the date on which the rule will expire and shall continue in effect until that date. Any agency that adopts a temporary rule to implement the provisions of the act shall report the text of the rule and the agency's written statement of its findings of the need for the rule to the Joint Legislative Administrative Procedure Oversight Committee within 30 days of the adoption of the temporary rule. Section 4 applies to the adoption of temporary rules by the Department of Administration under § 113A-11 (a) and to the adoption of temporary rules that establish minimum criteria by any State agency, as defined in § 113A-9, under § 113A-11 (b).

ARTICLE 7.

Coastal Area Management.

Part 1. Organization and Goals.

§ 113A-100. Short title.

Editor's Note. — Session Laws 2000-142, s. 3, provides that, notwithstanding G.S. 150B-21.3(a) and 26 NCAC 2C.0102(11), the Coastal Resources Commission may adopt a temporary rule to establish criteria for exceptions to the regulatory requirement, effective August 1, 2000, of a 30-foot development setback along public trust and estuarine waters to allow construction of residences on previously platted undeveloped lots of 5,000 square feet or less that are located in intensively developed areas and that would otherwise be prohibited under rules adopted by the Commission pursuant to Article 7 of Chapter 113A of the General Statutes. The temporary rule shall become effective upon its adoption by the Commission and shall remain in effect until a permanent rule that replaces the temporary rule becomes effective.

Part 3. Areas of Environmental Concern.

§ 113A-115. Designation of areas of environmental concern.

(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings required by this section are in addition to the hearing required by Article 2A of Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:

(1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.

(3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.

(4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby.

(b) In addition to the notice required by G.S. 113A-115(a)(2) notice shall be given to any interested State agency and to any citizen or group that has filed a request to be notified of a public hearing to be held under this section.

(c) The Commission shall review the designated areas of environmental concern at least biennially. New areas may be designated and designated areas may be deleted, in accordance with the same procedures as apply to the original designations of areas under this section. Areas shall not be deleted unless it is found that the conditions upon which the original designation was based shall have been found to be substantially altered. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1975, 2nd Sess., c. 983, s. 78; 1981, c. 932, s. 2.1; 1987, c. 827, s. 135; 2000-189, s. 11.)

Effect of Amendments. — Session Laws 2000-189, s. 11, effective August 2, 2000, substituted "Article 2A" for "Article 2" in subsection (a).

Part 4. Permit Letting and Enforcement.

§ 113A-120. Grant or denial of permits.

(a) The responsible official or body shall deny an application for a permit upon finding:

(1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.

(2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).

(3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).

(4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).

(5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.

(6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.

(7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.

(8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.

(9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.

(10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.

(b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(b1) **(Effective until April 1, 2001)** In addition to those factors set out in subsection (a) of this section or of G.S. 113A-120.2, and notwithstanding the provisions of subsection (b) of this section or of G.S. 113A-120.2, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and state laws, regulations, and rules for the protection of the environment.

(b1) **(Effective April 1, 2001)** In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

§ 113A-120(b1) is set out twice. See notes.

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and state laws, regulations, and rules for the protection of the environment.

(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) Repealed by Session Laws 1989, c. 676, s. 7. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1; 1983, c. 518, ss. 4, 5; 1987, c. 827, s. 138; 1989, c. 51; c. 676, s. 7; 1997-337, s. 2; 1997-456, s. 55.2B; 1997-496, s. 2; 2000-172, s. 2.1.)

Subsection (b1) Set Out Twice. — The first version of subsection (b1) set out above is effective until April 1, 2001. The second version of subsection (b1) set out above is effective April 1, 2001.

Editor's Note. —

Session Laws 1997-337, s. 3, as amended by Session Laws 1997-456, s. 55.2B, and Session Laws 2000-172, s. 2.1, provides that the 1997 amendment to this section, which amended subsection (b1), is effective July 25, 1997, expires April 1, 2001, and is applicable to permits granted or applications submitted prior to April 1, 2001, which shall be transferable.

Session Laws 2000-172, s. 8.2, contains a severability clause.

§ 113A-120.1. Variances.

CASE NOTES

Estoppel from Challenging Regulatory Scheme. — Plaintiffs' acknowledgment in their complaint that they sought, received and took full advantage of a variance for an erosion control structure pursuant to the regulatory scheme which they were challenging precluded them from asserting claim that the hardened structure rules and regulatory scheme under which the rules were promulgated were invalid and unconstitutional. Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 217, 517 S.E.2d 406 (1999).

Cited in Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 286, 517 S.E.2d 401 (1999).

§ 113A-120.2. (Expires April 1, 2001) Permits for urban waterfront redevelopment in historically urban areas; certain nonwater dependent uses allowed.

(a) Notwithstanding any other provision of law, any person may apply to the Commission for a permit for major development granting permission to use the person's land for a nonwater dependent use that is otherwise prohibited by

§ 113A-120.2 has a delayed expiration date. See notes.

rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. The procedure to apply for the permit shall be as provided by G.S. 113A-119.

(b) Notwithstanding G.S. 113A-120(a), the Commission shall grant a permit for nonwater dependent development in public trust areas designated pursuant to G.S. 113A-113(b)(5) if the following criteria are met:

(1) The land is waterfront property located in a municipality.

(2) The land has a history of urban-level development as evidenced by any of the following:

a. The land is a historic place that is listed, or has been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966.

b. The land is a historical, archaeological, and other site owned, managed, or assisted by the State of North Carolina pursuant to Chapter 121 of the General Statutes.

c. The land has a central business district zoning classification, or any other classification that may be designated as acceptable by the Commission.

(3) The proposed development is sponsored in part or in whole by the local jurisdiction in which the development would be located for the purpose of significantly increasing public access consistent with the Coastal Area Management guidelines.

(4) The municipality in which the activity would occur has determined that the development will not have a significant adverse impact on the environment.

(5) The development as requested is consistent with a local urban waterfront development plan, local development regulations, public access plans, and other applicable local authority.

(c) Except as otherwise provided by this section, all other provisions of this Article apply to a permit applied for under this section, including the provisions of G.S. 113A-120(b1) and (b2).

(d) A structure constructed over coastal wetlands, estuarine waters, or public trust areas prior to 1 July 2000 may be used to serve to the public food and drink that is prepared at a food services establishment that began operation on or before 1 July 2000. (1997-337, s. 1; 1997-456, s. 55.2B; 2000-140, s. 92.1(a); 2000-172, s. 2.1.)

Editor's Note. — Session Laws 1997-337, s. 3, as amended by Session Laws 1997-456, s. 55.2B, and Session Laws 2000-172, s. 2.1, provides that this section is effective July 25, 1997, expires April 1, 2001, and is applicable to permits granted or applications submitted prior to April 1, 2001, which shall be transferable.

Session Laws 2000-172, s. 2.2, as amended by Session Laws 2000-140, s. 92.1(b), effective August 2, 2000, provides that notwithstanding G.S. 150B-21.3(a) and 26 NCAC 2C.0102(11), the Coastal Resources Commission is to adopt a temporary rule to establish use standards for waterfront development in urban areas, to replace G.S. 113A-120.2 when it expires. The rule is to become effective April 1, 2001 and shall remain in effect until a permanent rule that replaces the temporary rule becomes effective.

Session Laws 2000-172, s. 8.2, contains a severability clause.

Effect of Amendments. — Session Laws 2000-140, s. 92.1.(a), effective July 21, 2000, added "certain nonwater dependent uses allowed" in the catchline and added subsection (d).

§ 113A-121.1. Administrative review of permit decisions.

CASE NOTES

Cited in Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 286, 517 S.E.2d 401 (1999).

§ 113A-123. Judicial review.

CASE NOTES

Issue Rendered Moot. — Action of the Coastal Resources Commission, granting plaintiffs'/condo owners' fourth variance request for construction of erosion control structure, rendered moot issues relating to earlier denials of requests for variances under this section, and court denied plaintiffs who had failed to seek administrative review of its claims the opportunity to assert that those claims had evaded effective review. Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 286, 517 S.E.2d 401 (1999).

§ 113A-128. Protection of landowners' rights.

CASE NOTES

No Constitutional Right to Erosion Control. — Plaintiffs' claims that hardened structure rules, promulgated by defendants, effected a taking of property without just compensation and violated this section were properly dismissed, because plaintiffs failed to cite any persuasive authority for the proposition that a littoral or riparian landowner has a right to erect hardened structures in statutorily designated areas of environmental concern to protect their property from erosion or migration. Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 217, 517 S.E.2d 406 (1999).

Article 7C.

Beach Management Plan.

§ 113A-134.11. Department to compile and evaluate information.

The Department of Environment and Natural Resources shall compile and evaluate information on the current conditions and erosion rates of beaches, on coastal geology, and on storm and erosion hazards for use in developing a State plan and strategy for beach management and restoration. The Department of Environment and Natural Resources shall make this information available to local governments for use in land-use planning. (2000-67, s. 13.9(b).)

Editor's Note. — Session Laws 2000-67, s. 13.9 was codified as Chapter 113A, Article 7C, with s. 13.9(b) codified as G.S. 113A-134.11, and ss. 13.9(c) and 13.9(d) codified as G.S. 113A-134.12 at the direction of the Revisor of Statutes.

Session Laws 2000-67, s. 28.5, makes the Article effective July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 13.9 (a), provides: "The General Assembly makes the following findings:

"(1) North Carolina has 320 miles of ocean beach, including some of the most pristine and attractive beaches in the country.

"(2) The balance between economic development and quality of life in North Carolina has made our coast one of the most desirable along the Atlantic Seaboard.

"(3) North Carolina's beaches are vital to the State's tourism industry.

"(4) North Carolina's beaches belong to all the State's citizens and provide recreational and economic benefits to our residents statewide.

"(5) Beach erosion can threaten the economic viability of coastal communities and can significantly affect State tax revenues.

"(6) The Atlantic Seaboard is vulnerable to hurricanes and other storms, and it is prudent to take precautions such as beach nourishment that protect and conserve the State's beaches and reduce property damage and flooding.

"(7) Beach renourishment as an erosion control method provides hurricane flood protection, enhances the attractiveness of beaches to tourists, restores habitat for turtles, shorebirds, and plants, and provides additional public access to beaches.

"(8) Federal policy previously favored and assisted voluntary movement of structures threatened by erosion, but this assistance is no longer available.

"(9) Relocation of structures threatened by erosion is sometimes the best available remedy for the property owner and is in the public interest.

"(10) Public parking and public access areas are needed for use by the general public to enable their enjoyment of North Carolina's beaches.

"(11) Acquisition of high erosion hazard property by local or State agencies can reduce risk to citizens and property, reduce costs to insurance policyholders, improve public access to beaches and waterways, and protect the environment.

"(12) Beach nourishment projects such as those at Wrightsville Beach and Carolina Beach have been very successful and greatly reduced property damage during Hurricane Fran.

"(13) Because local beach communities derive the primary benefits from the presence of adequate beaches, a program of beach management and restoration should not be accomplished without a commitment of local funds to combat the problem of beach erosion.

"(14) The State of North Carolina prohibits seawalls and hardening the shoreline to prevent destroying the public's beaches.

"(15) Beach nourishment is encouraged by both the Coastal Resources Commission and the U.S. Army Corps of Engineers as a method to control beach erosion.

"(16) The Department of Environment and Natural Resources has statutory authority to assist local governments in financing beach nourishment projects and is the sponsor of several federal navigation projects that result in dredging beach-quality sand.

"(17) It is declared to be a necessary governmental responsibility to properly manage and protect North Carolina's beaches from erosion and that good planning is needed to assure a cost-effective and equitable approach to beach management and restoration, and that as part of a comprehensive response to beach erosion, sound policies are needed to facilitate the ability of landowners to move threatened structures and to allow public acquisition of appropriate parcels of land for public beach access."

Session Laws 2000-67, s. 13.9(e), provides: "The Department of Environment and Natural Resources shall submit the first plan required by this act, no later than May 1, 2001. With the first plan, the Department shall:

"(1) Provide to the General Assembly a report on alternative State and local government sources of funding for beach nourishment.

"(2) Review State, federal, and local policies on enabling and assisting property owners to move structures that are threatened by imminent erosion damage and shall recommend policies, legislative changes, and actions to make moving structures more feasible for landowners.

"(3) Review existing programs for the acquisition and management of public land for beach access areas and open space, including identifying high-hazard, erosion-prone, or unbuildable parcels of land that may be used for this purpose, and shall recommend any policy and legislative changes needed to improve public beach access. The Department shall recommend priorities for land acquisition for public beach access, open space, and hazard-reduction purposes."

Session Laws 2000-67, s. 13.9(f) provides that in the event that federal funds become available for planning and developing shore protection projects, the State shall match those funds in accordance with the funding guidelines set out in G.S. 143-215.71.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 113A-134.12. Multiyear beach management and restoration strategy and plan.

(a) The Department of Environment and Natural Resources shall develop a multiyear beach management and restoration strategy and plan that does all of the following:

(1) Utilizes the data and expertise available in the Divisions of Water Resources, Coastal Management, and Land Resources.
(2) Identifies the erosion rate at each beach community and estimates the degree of vulnerability to storm and hurricane damage.
(3) Uses the best available geological and geographical information to determine the need for and probable effectiveness of beach nourishment.
(4) Provides for coordination with the U.S. Army Corps of Engineers, the North Carolina Department of Transportation, the North Carolina Division of Emergency Management, and other State and federal agencies concerned with beach management issues.
(5) Provides a status report on all U.S. Army Corps of Engineers' beach protection projects in the planning, construction, or operational stages.
(6) Makes maximum feasible use of suitable sand dredged from navigation channels for beach nourishment to avoid the loss of this resource and to reduce equipment mobilization costs.
(7) Promotes inlet sand bypassing where needed to replicate the natural flow of sand interrupted by inlets.
(8) Provides for geological and environmental assessments to locate suitable materials for beach nourishment.
(9) Considers the regional context of beach communities to determine the most cost-effective approach to beach nourishment.
(10) Provides for and requires adequate public beach access, including handicapped access.
(11) Recommends priorities for State funding for beach nourishment projects, based on the amount of erosion occurring, the potential damage to property and to the economy, the benefits for recreation and tourism, the adequacy of public access, the availability of local government matching funds, the status of project planning, the adequacy of project engineering, the cost-effectiveness of the project, and the environmental impacts.
(12) Includes recommendations on obtaining the maximum available federal financial assistance for beach nourishment.
(13) Is subject to a public hearing to receive citizen input.

(b) Each plan shall be as complete as resources and available information allow. The Department of Environment and Natural Resources shall revise the plan every two years and shall submit the revised plan to the General Assembly no later than March 1 of each odd-numbered year. The Department may issue a supplement to the plan in even-numbered years if significant new information becomes available. (2000-67, s. 13.9(c), (d).)

Editor's Note. — Session Laws 2000-67, ss. 13.9(c) and (d), were codified as G.S. 113A-134.12 at the direction of the Revisor of Statutes.

ARTICLE 16.

Conservation Easements Program.

§§ 113A-236 through 113A-239: Reserved for future codification purposes.

ARTICLE 17.

Conservation, Farmland, And Open Space Protection And Coordination.

§ 113A-240. Intent.

(a) It is the intent of the General Assembly to continue to support and accelerate the State's programs of land conservation and protection, to find means to assure and increase funding for these programs, to support the long-term management of conservation lands acquired by the State, and to improve the coordination, efficiency, and implementation of the various State and local land protection programs operating in North Carolina.

(b) It is the further intent of the General Assembly that the State's lands should be protected in a manner that minimizes any adverse impacts on the ability of local governments to carry out their broad mandates. (2000-23, s. 2.)

Editor's Note. — Session Laws 2000-23, s. 1, provides: "The General Assembly reaffirms the strong desire of the State and its citizens to conserve and protect the lands needed to provide a high-quality environment for present and future generations, while also preserving, to the maximum extent possible, the liberty of each individual to pursue their interests."

Session Laws 2000-23, s. 4, made this Article effective June 28, 2000.

§ 113A-241. State to Preserve One Million Acres; Annual Report.

(a) The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009. These lands shall be protected by acquisition in fee simple or by acquisition of perpetual conservation easements by public conservation organizations or by private entities that are organized to receive and administer lands for conservation purposes.

(b) The Secretary of Environment and Natural Resources shall lead the effort to add one million acres to the State's protected lands and shall plan and coordinate with other public and private organizations and entities that are receiving and administering lands for conservation purposes.

(c) The Secretary of Environment and Natural Resources shall report to the Governor and the Environmental Review Commission annually beginning on September 1, 2000, on the State's progress towards attaining the goal established in Section 2 of this Article. (2000-23, ss. 2, 3.)

Editor's Note. — Session Laws 2000-23, s. 3, was codified as subsection (c) of this section and "this Article" was substituted for "this act" in that subsection at the direction of the Revisor of Statutes.

Chapter 113B.

North Carolina Energy Policy Act of 1975.

Article 1.

Energy Policy Council.

Article 1.

Energy Policy Council.

§ 113B-2. Creation of Energy Policy Council; purpose of Council.

(a) There is hereby created a council to advise and make recommendations on energy policy to the Governor and the General Assembly to be known as the Energy Policy Council which shall be located within the Department of Administration.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy Policy Council shall be as prescribed by the Secretary of Administration.

(c) The Energy Policy Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy. (1975, c. 877, s. 4; 1977, c. 23, ss. 1, 2; 2000-140, s. 76(a).)

Effect of Amendments. — Session Laws 2000-140, s. 76(a), effective September 30, 2000, substituted "Administration" for "Commerce" in subsections (a) and (b).

§ 113B-6. General duties and responsibilities.

The Energy Policy Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor a comprehensive long-range State energy policy to achieve maximum effective management and use of present and future sources of energy, such policy to include but not be limited to an energy efficiency program, an energy management plan, an emergency energy program, and an energy research and development program;

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy and to encourage the efficient use of all such energy forms in a manner consistent with State energy policy;

(3) To continually review and coordinate all State government research, education and management programs relating to energy matters and to continually educate and inform the general public regarding such energy matters;

(4) To recommend to the Governor and to the General Assembly needed energy legislation and to recommend for implementation such modi-

fications of energy policy, plans and programs as the Council considers necessary and desirable. (1975, c. 877, s. 4; 2000-140, s. 76(b).)

Effect of Amendments. — Session Laws 2000-140, s. 76(b), effective September 30, 2000, substituted "efficiency program" for "conservation plan" in subdivision (1).

§ 113B-7. Energy Efficiency Program; components.

(a) The Energy Policy Council shall prepare a recommended Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Efficiency Program shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the Energy Policy Council considers to be a significant part of a statewide conservation effort and which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended program.

(d) In addition to specific conservation recommendations, the Energy Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended program, the Council shall arrange for its distribution to interested parties and shall make the program available to the public and the Council further shall set a date for public hearing on said program.

(e) Upon completion of the Energy Efficiency Program, the Council shall transmit said program, to be known as the State Energy Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Efficiency Program to the President of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the Energy Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section. (1975, c. 877, s. 4; 1981, c. 701, s. 1; 2000-140, s. 76(c).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 14.18(a)-(e), renames the State Energy Conservation Plan as the State Energy Efficiency Program. Effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Residential Energy Conservation Assistance Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Health and Human Services. Similarly, effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Energy Policy Council and State Energy Efficiency Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Administration. Effective July 1, 2000, all vacant positions in the Energy Division of the Department of Commerce are abolished.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-140, s. 76(c), effective September 30, 2000, substituted "Efficiency Program" for "Conservation Plan" in the catchline and throughout the section; substituted "program" for "plan" throughout the section; and made a minor wording change.

§ 113B-11. Powers and authority.

(a) The Energy Policy Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

(b) To assure the adequate development of relevant energy information, as provided in G.S. 113B-10, the Council may require all energy producers and major energy consumers, as determined by the Council, to file such reports and forecasts and at such dates as the Council may request; provided, however, that the Council may request only specific energy-related information which it deems necessary to carry out its duties as defined in Articles 1 and 2 of this Chapter.

(c) The Council shall have authority to apply for and utilize grants, contributions and appropriations in order to carry out its duties as defined in Articles 1 and 2 of this Chapter, provided, however, that all such applications and requests are made through and administered by the Department of Administration.

(d) The Council shall have authority to request said Department to allocate and dispense any funds made available to the Council for energy research and related work efforts in such a manner as the Council desires subject only to the stipulation that said funds be reasonably used in furtherance of the purposes of this Article.

(e) The Department of Administration shall provide the staffing capability to the Energy Policy Council so as to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article. The Utilities Commission is hereby authorized to make its staff available to the Council to assist in the development of a State energy policy. (1975, c. 877, s. 4; 1977, c. 23, s. 1; 1989, c. 751, s. 7(10); 1991 (Reg. Sess., 1992), c. 959, s. 28; 2000-140, s. 76(d).)

Effect of Amendments. — Session Laws 2000-140, s. 76(d), effective September 30, 2000, substituted "The Department" for "The Energy Division of the Department" in subsection (e) and substituted "Administration" for "Commerce" in subsections (c) and (e).

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

§ 114-2. Duties.

CASE NOTES

The Attorney General of North Carolina had standing to file a brief on behalf of appellant-mother, a New York resident, in a case involving the enforcement of orders rendered in an action to register a foreign child support order. New York v. Paugh, 135 N.C. App. 434, 521 S.E.2d 475 (1999).

Cited in State v. Summers, 351 N.C. 620, 528 S.E.2d 17 (2000).

§ 114-2.4. Attorney General to render opinion on settlement agreements.

CASE NOTES

The enactment of this section does not provide a basis for refusing a consent decree in federal court. United States v. North Carolina, 180 F.3d 574 (4th Cir. 1999).

§ 114-4.2D. Employment of attorney for Energy Policy Council and Energy Efficiency Program of Department of Administration.

The Attorney General shall assign an attorney on his staff to work full time with the Energy Policy Council and Energy Efficiency Program of the Department of Administration. Such attorney shall be subject to all provisions of

Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned to him by the Attorney General. (1979, c. 942; 1989, c. 751, s. 7(11); 1991 (Reg. Sess., 1992), c. 959, s. 29; 2000-140, s. 76(e).)

Effect of Amendments. — Session Laws 2000-140, s. 76(e), effective September 30, 2000, substituted "Energy Policy Council and Energy Efficiency Program of Department of Administration" for "Energy Division of Department of Commerce" in the catchline and in the section.

Article 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics.

The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, the necessary data to make a trace regarding all firearms seized, forfeited, found, or otherwise coming into the possession of any State or local law enforcement agency of the State that are believed to have been used in the commission of a crime, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(2a) To collect, correlate, and maintain the following information regarding traffic law enforcement by State law enforcement officers:

a. The number of drivers stopped for routine traffic enforcement by State law enforcement officers, the officer making each stop, the date each stop was made, the agency of the officer making each stop, and whether or not a citation or warning was issued;

b. Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and gender;
c. The alleged traffic violation that led to the stop;
d. Whether a search was instituted as a result of the stop;
e. Whether the vehicle, personal effects, driver, or passenger or passengers were searched, and the race or ethnicity, approximate age, and gender of each person searched;
f. Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion;
g. Whether any contraband was found and the type and amount of any such contraband;
h. Whether any written citation or any oral or written warning was issued as a result of the stop;
i. Whether an arrest was made as a result of either the stop or the search;
j. Whether any property was seized, with a description of that property;
k. Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers;
l. Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason;
m. Whether any injuries resulted from the stop;
n. Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation; and
o. The geographic location of the stop; if the officer making the stop is a member of the State Highway Patrol, the location shall be the Highway Patrol District in which the stop was made; for all other law enforcement officers, the location shall be the city or county in which the stop was made.

The information required by this subdivision need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in sub-subdivisions d. through n. of this subdivision.

The identity of the law enforcement officer making the stop required by sub-subdivision a. of this subdivision may be accomplished by assigning anonymous identification numbers to each officer in an agency. The correlation between the identification numbers and the names of the officers shall not be a public record, and shall not be disclosed by the agency except when required by order of a court of competent jurisdiction to resolve a claim or defense properly before the court.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.
(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.
(5) To perform such other duties as may be from time to time prescribed by the Attorney General.
(6) To promulgate rules and regulations for the administration of this Article. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1; 1995, c. 545, s. 2; 1999-26, s. 1; 1999-225, s. 1; 2000-67, s. 17.2(a).)

Editor's Note. —
Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"
Session Laws 2000-67, s. 28.4, contains a severability clause.
Effect of Amendments. —
Session Laws 2000-67, s. 17.2(a), effective August 1, 2000, substituted "officers, the officer making each stop, the date each stop was made, the agency of the officer making each stop" for "officers" in subdivision (2a)a; added subdivision (2a)o; added the last paragraph under (2a); and made minor stylistic changes.

Article 4.

State Bureau of Investigation.

§ 114-15.1. Department heads to report possible violations of criminal statutes involving misuse of State property to State Bureau of Investigation.

OPINIONS OF ATTORNEY GENERAL

Action Required Within 10-Day Period. — Any time a department head receives an allegation of possible criminal misuse of State-owned property, the threshold determination of credibility should be made within the 10-day period referenced in this section; if the allegation appears credible, the Director of the State Bureau of Investigation should be notified in writing immediately, and even if the department head is unable to determine whether the allegation is credible or not within 10 days, the SBI still should be notified of the allegation within the 10-day period. See opinion of Attorney General to The Honorable R. L. Clark, North Carolina State Senate, 1998 N.C.A.G. 32 (7/24/98).

§ 114-18.1: Repealed by Session Laws 2000-119, s. 6, effective December 1, 2000.

Cross References. — As to duty of local and State law enforcement agencies to report, within 48 hours, seizures of unauthorized substances and arrests for possession of unauthorized substances, see § 105-113.108(b).

§ 114-19. Criminal statistics.

(a) It shall be the duty of the State Bureau of Investigation to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or cooperative action on the part of the criminals, reporting such conditions, and to cooperate with all officials in detecting and preventing.

(b) Repealed by Session Laws 2000-119, s. 7, effective December 1, 2000. (1965, c. 1049, s. 1; 1973, c. 1286, s. 19; 1989, c. 772, s. 3; 1989 (Reg. Sess., 1990), c. 814, s. 9; 2000-119, s. 7.)

Effect of Amendments. — Session Laws 2000-119, s. 7, effective December 1, 2000, repealed subsection (b), requiring the State Bureau of Investigation to notify to the Department of Revenue as to arrests and seizures involving non-tax-paid controlled substances and counterfeit controlled substances.

§ 114-19.3. Criminal record checks of providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled.

(a) Authority. — The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

(1) Hospitals licensed under Chapter 131E of the General Statutes.
(2), (3) Repealed by Session Laws 2000-154, s. 5, effective January 1, 2001.
(4) Hospices licensed under Chapter 131E of the General Statutes.
(5) Child placing agencies licensed under Chapter 131D of the General Statutes.
(6) Residential child care facilities licensed under Chapter 131D of the General Statutes.
(7) Hospitals licensed under Chapter 122C of the General Statutes.
(8) Repealed by Session Laws 2000-154, s. 5, effective January 1, 2001.
(9) Licensed child care facilities and nonlicensed child care homes regulated by the State.
(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly.

(b) Procedure. — A criminal record check may be conducted by using an individual's fingerprint or any information required by the Department of Justice to identify that individual. A criminal record check shall be provided only if the individual whose record is checked consents to the record check. The information shall be kept confidential by the entity that receives the information. Upon the disclosure of confidential information under this section by the entity, the Department may refuse to provide further criminal record checks to that entity.

(c) Repealed by Session Laws 1995 (Regular Session, 1996), c. 606, s. 1.

(d) Foster or Adoptive Parent. — The Department of Justice, at the request of a child placing agency licensed under Chapter 131D of the General Statutes or a local department of social services, may provide a criminal record check of a prospective foster care or adoptive parent if the prospective parent consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency or department, the Department may refuse to provide further criminal record checks to that agency or department.

(e) Fee. — The Department may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee may not exceed fourteen dollars ($14.00). (1993, c. 403, s. 1; 1995, c. 453, s. 1; 1995 (Reg. Sess., 1996), c. 606, s. 1; 1997-506, s. 38; 2000-154, s. 5.)

Editor's Note. — Session Laws 2000-154, s. 7, makes the act effective January 1, 2001, and applicable to offenses committed and offers of employment made on and after that date.

Effect of Amendments. — Session Laws 2000-154, s. 5, repealed subdivision (a)(2) stating, "Nursing homes or combination homes licensed under Chapter 131E of the General Statutes"; repealed subdivision (a)(3) stating, "Adult care homes licensed under Chapter 131D of the General Statutes"; and repealed subdivision (a)(8) stating, "Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter"; in subdivision (a)(4) deleted "Home care agencies or" preceding "Hospices"; and made a stylistic change.

§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Health and Human Services, and the Department of Juvenile Justice and Delinquency Prevention.

(a) Definitions. — As used in this section, the term:

(1) "Covered person" means:

a. An applicant for employment or a current employee in a position in the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention who provides direct care for a client, patient, student, resident or ward of the Department; or

b. Supervises positions providing direct care as outlined in sub-subdivision a. of this subdivision.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention, the North Carolina Department of Justice may provide to the requesting department a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the requesting department shall provide to the Department of

Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information either department receives through the checking of the criminal history is privileged information and for the exclusive use of that department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section. (1997-260, s. 1; 1997-443, s. 11A.118(b); 1998-202, s. 4(f); 2000-137, s. 4(h).)

Effect of Amendments. — Session Laws 2000-137, s. 4(h), effective July 20, 2000, substituted "requesting department" for "Department or Office" twice in subsection (b); substituted "Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention" for "Department or Office" in subsections (b) and (d); substituted "either department" and "that department" for "the Department or Office" in subsection (c); and substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in the catchline and throughout the section.

§ 114-19.8. Criminal record checks of applicants for auctioneer, apprentice auctioneer, or auction firm license.

The Department of Justice may provide to the North Carolina Auctioneers Commission from the State and National Repositories of Criminal Histories the criminal history of any applicant for an auctioneer's license under Chapter 85B of the General Statutes. Along with the request, the Commission shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a check of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Commission shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information. (1999-142, s. 9; 2000-140, s. 59(c).)

Editor's Note. — Session Laws 2000-140, s. 59(c), becomes effective October 1, 2000, and applies to applications for licensure for auctioneers, apprentice auctioneers, and auction firms filed on or after that date.

Effect of Amendments. — Session Laws 2000-140, s. 59(c), inserted "apprentice auctioneer, or auction firm" in the catchline. See editor's note for effective date and applicability.

§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home care agencies, and area mental health, developmental disabilities, and substance abuse services authorities.

The Department of Justice may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

(1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.

(2) Adult care homes licensed under Chapter 131D of the General Statutes.

(3) Home care agencies licensed under Chapter 131E of the General Statutes.

(4) Area mental health, developmental disabilities, and substance abuse services authorities licensed under Chapter 122C of the General

Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.

The criminal history shall be provided to nursing homes and home care agencies in accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40, and to area mental health, developmental disabilities, and substance abuse services authorities in accordance with G.S. 122C-80. The requesting entity shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked if a national criminal history record check is required, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories. If a national criminal history record check is required, the fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. All information received by the entity shall be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as applicable. The Department of Justice shall charge a reasonable fee for conducting the checks authorized by this section. The fee for the State check may not exceed fourteen dollars ($14.00). (2000-154, s. 1.)

Editor's Note. — Session Laws 2000-154, s. 7, made this section effective January 1, 2001, and applicable to offenses committed and offers of employment made on or after that date.

§ 114-21. Minority sensitivity training for law enforcement personnel.

(a) The Department of Justice shall develop guidelines for minority sensitivity training for all law enforcement personnel throughout the State. The Department shall ensure that all persons who work with minority juveniles in the juvenile justice system are taught how to communicate effectively with minority juveniles and how to recognize and address the needs of those juveniles. The Department shall also advise all law enforcement and professionals who work within the juvenile justice system of ways to improve the treatment of minority juveniles so that all juveniles receive equal treatment. Except where local law enforcement has existing minority sensitivity training that meets the Department guidelines, the Department shall conduct the minority sensitivity training annually. Prior to the training each year, the Department shall assess whether minorities are receiving fair and equal treatment in the juvenile justice system with regard to the administration of predisposition procedures, of diversion methods, of dispositional alternatives, and of treatment and post-release supervision plans.

(b) The Department of Juvenile Justice and Delinquency Prevention shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section. (1998-202, s. 17; 2000-137, s. 4(i).)

Effect of Amendments. — Session Laws 2000-137, s. 4(i), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subsection (b).

Chapter 115C.

Elementary and Secondary Education.

SUBCHAPTER VII. FISCAL AFFAIRS.

Article 31A.

Civil Penalty and Forfeiture Fund.

Article 32B.

Computer Loan Revolving Fund.

Article 32C.

Fund for the Reduction of Class Size in Public Schools.

Article 34B.

Qualified Zone Academy Bonds.

SUBCHAPTER IX. PROPERTY.

Article 38A.

Public School Building Capital Fund.

SUBCHAPTER I. GENERAL PROVISIONS.

Article 1.

Definitions and Preliminary Provisions.

§ 115C-1. General and uniform system of schools.

Local Modification. — (As to Chapter 115C) Cabarrus: 2000-87. For additional local modifications to this section, see the main volume.

Editor's Note. —

Session Laws 1999-237, 8.5(b), as amended by Session Laws 2000-67, s. 8.15, provides that supplemental funds shall be used only (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks, and (ii) for salary supplements for instructional personnel and instructional support personnel. Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at level I or II on the writing tests in grades 4 and 7. Local boards of education shall report to the State Board of Education on an annual basis on funds used for this purpose, and the State Board shall report this information to the Joint Legislative Education Oversight Committee.

Session Laws 1999-237, s. 8.6(a), as amended by Session Laws 2000-67, s. 8.25, provides that the State Board of Education shall allocate funds, according to a formula, that were appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,150 students and (ii) to each county school administrative unit with an average daily membership of from 3,150 to 4,000 students if the county has a county-adjusted property tax base per student below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units within the county is from 3,150 to 4,000 students. If funds appropriated for small school system supplemental funding are not adequate to fund fully the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

Article 2.

State Board of Education.

§ 115C-13. Duty to maintain confidentiality of certain records.

OPINIONS OF ATTORNEY GENERAL

The licensure status of teachers is public information that the State Board of Education and DPI create pursuant to the State Board of Education's constitutional and statutory authority to license or certify public school employees and is, therefore, not subject to the protections of this section. See opinion of Attorney General to Lowell Harris, Director Exceptional Children Division N. C. Department of Public Instruction, 1998 N.C.A.G. 47 (11/20/98).

§ 115C-16. Authorization for school uniform pilot program.

CASE NOTES

General County Authority. — Where the county's uniform policy was implemented pursuant to its "general control and supervision" authority under § 15C-36, the enactment of that uniform policy did not contravene this section. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649 (E.D.N.C. 1999).

Construction with Other Laws. — This section did not limit the authority of the County School Board to adopt a uniform policy for its students, which was implemented pursuant to its "general control and supervision" authority under § 115C-36. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649 (E.D.N.C. 1999).

This section does not limit the authority of a county school board to adopt a uniform policy; it merely authorizes the State Board of Education to implement a pilot program, and the State Board chose not to do so, but instead to allow local authorities to adopt uniform policies in accordance with guidelines provided by the State Board. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649 (E.D.N.C. 1999).

Article 5.

Local Boards of Education.

§ 115C-36. Designation of board.

CASE NOTES

Sovereign Immunity of Boards. — Using an analysis of the organizational and financial structure of the local school boards under both case and statutory law, the court determined that defendant board was an arm of the state for purposes of a suit seeking FLSA damages, and as such, it was entitled to sovereign immunity from a suit for monetary relief. Cash v.

Granville County Bd. of Educ., — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 4852 (E.D.N.C. March 8, 2000).

General County Authority. — Where the county's uniform policy was implemented pursuant to its "general control and supervision" authority under this section, the enactment of that uniform policy did not contravene § 115C-16. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649 (E.D.N.C. 1999).

Adoption of School Uniform Policy. — This section did not limit the authority of the County School Board to adopt a uniform policy for its students, which was implemented pursuant to its "general control and supervision" authority under this section. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649 (E.D.N.C. 1999).

§ 115C-37. Election of board members.

Local Modification. — Ashe County Board of Education: 1995, c. 128, s. 1, as amended by 2000-6, s. 1. For additional local modifications to this section, see the main volume.

OPINIONS OF ATTORNEY GENERAL

This section did not supercede local legislation which provided that members of the County Board of Education, appointed to fill mid-term vacancies, would serve the remainder of the term of the office to which they were appointed. See opinion of Attorney General to Mr. Charles S. Rountree, III, Chairman, Edgecombe County Board of Elections, 1998 N.C.A.G. 2 (1/14/98).

§ 115C-42. Liability insurance and immunity.

CASE NOTES

The defendants/county board of education did not waive their sovereign immunity through the purchase of liability insurance under this section where every one of three insurance policies precluded coverage for the injuries received by the minor plaintiff who was hit by a car five months after the assistant principal of her elementary school changed her bus stop in response to a complaint that she had been assaulted by several boys while on a school bus. Herring ex rel. Marshall v. Winston-Salem/Forsyth County Bd. of Educ., — N.C. App. —, 529 S.E.2d 458, 2000 N.C. App. LEXIS 500 (2000).

After-School Program as Traditional Government Activity. — In personal injury case, court disagreed with plaintiff's contention that after-school program was a day-care facility and a non-traditional governmental activity not entitled to governmental immunity under this section, because the program failed to meet the statutory definition of a day-care facility under § 110-86, the record revealed no evidence of profits, and the fees were insubstantial. Schmidt v. Breeden, 134 N.C. App. 248, 517 S.E.2d 171 (1999).

§ 115C-45. Judicial functions of board.

CASE NOTES

This section entitles a non-teacher to judicial review of a school board's decision if that decision affects her character. Cooper v. Board of Educ., 135 N.C. App. 200, 519 S.E.2d 536 (1999).

Dismissal Affecting Character. — Being dismissed from a job for making a racial comment, which the school board's counsel characterized as being "totally unacceptable for an employee in a school setting," affected the petitioner's character within the meaning of this section and entitled her to judicial review. Cooper v. Board of Educ., 135 N.C. App. 200, 519 S.E.2d 536 (1999).

Review Procedures Held Adequate. — Although school board did not precisely follow the review procedures set out in this section, the review that petitioner received more than compensated for any procedural flaws in the board's actions and her substantial rights were not prejudiced thereby. Cooper v. Board of Educ., 135 N.C. App. 200, 519 S.E.2d 536 (1999).

OPINIONS OF ATTORNEY GENERAL

Evidentiary Scope of A School Board Hearing. — If a career employee chooses to bypass the case manager hearing, the record before the board in a hearing pursuant to § 115C-325(j2)(3) must include the superintendent's recommendation and grounds for the recommendation as defined in § 115C-325(h)(2), documentary evidence submitted by the superintendent and the employee, the parties' briefs on the law and evidence in the record, and oral arguments. The career employee waives his right to present nondocumentary evidence unless the board exercises its discretion under this section to subpoena additional evidence or testimony that might aid in its decision. See opinion of Attorney General to Mr. L. P. Hornthal, Jr. Hornthal, Riley, Ellis & Maland, LLP, 1997 N.C.A.G. 69 (12/5/97).

§ 115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(1) To Provide an Adequate School System. — It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.

(2) To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions. — Local boards of education shall have the power and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.

(3) To Divide Local School Administrative Units into Attendance Areas. — Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.

(4) To Regulate Extracurricular Activities. — Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

(5) To Fix Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed under G.S. 115C-84.2.

(6) To Regulate Fees, Charges and Solicitations. — Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbooks fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.

(7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said

funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.

(8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.

(9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.

(10) To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to assure that the class size and teaching load requirements set forth in G.S. 115C-301 are met. Any teacher who believes that the requirements of G.S. 115C-301 have not been met shall make a report to the principal and superintendent, and the superintendent shall immediately determine whether the requirements have in fact not been met. If the superintendent determines the requirements have not been met, he shall make a report to the next local board of education meeting. The local board of education shall take action to meet the requirements of the statute. If the local board cannot organizationally correct the exception and if any of the conditions set out in G.S. 115C- 301(g)(1) exist, it shall immediately apply to the State Board of Education for additional personnel or a waiver of the class size requirements, as provided in G.S. 115C-301(g).

Upon notification from the State Board of Education that the reported exception does not qualify for an allotment adjustment or a waiver under provisions of G.S. 115C-301, the local board, within 30 days, shall take action necessary to correct the exception.

At the end of the second month of each school year, the local board of education, through the superintendent, shall file a report with the State Board of Education, in a format prescribed by the State Board of Education, describing the organization of each school, the duties of each teacher, the size of each class, and the teaching load of each teacher. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that exist at that time.

In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

(11) To Determine the School Calendar. — Local boards of education shall determine the school calendar under G.S. 115C-84.2.

(12) **(For final effective date see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the standard course of study.

(12) **(For future effective date see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the Basic Education Program.

(13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.

(14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.

(15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).

(16) To Remove a Superintendent, When Necessary. — Local boards of education shall remove a superintendent for cause, pursuant to the provisions of G.S. 115C-274(a).

(17) To Employ Assistant Superintendent and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).

(18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.

Prior to the beginning of each school year, each local board of education shall identify all reports, including local school required reports, that are required at the local level for the school year and shall, to the maximum extent possible, eliminate any duplicate or obsolete reporting requirements. No additional reports shall be required at the local level after the beginning of the school year without the prior approval of the local board of education.

Each local board of education shall appoint a person or establish a paperwork control committee to monitor all reports and other paperwork required of teachers by the central office.

(18a) To Adopt Rules and Policies Limiting the Noninstructional Duties of Teachers. — Local boards of education shall adopt rules and policies limiting the noninstructional duties assigned to teachers. A local board may temporarily suspend the rules and policies for individual schools upon a finding that there is a compelling reason the rules or policies should not be implemented. These rules and policies shall ensure that:

a. Teachers with initial certification are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to develop into skilled professionals;

b. Teachers with 27 or more years of experience are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to informally share their experience and expertise with their colleagues;

c. The noninstructional duties of all teachers are limited to the extent possible given federal, State, and local laws, rules, and policies, and that the noninstructional duties required of teachers are distributed equitably among employees.

(19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.

(20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.

(21) It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302.1(i), and 115C-316(b).

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of each school.

(22) To Provide School Food Services. — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.

(23) To Purchase Equipment and Supplies. — Local boards shall contract for equipment and supplies under G.S. 115C-522(a), 115C-522.1, and 115C-528.

(24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. Replacement units for activity buses shall be financed with local funds.

(25) To Secure Liability Insurance. — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.

(26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

(27) Repealed by Session Laws 1987, c. 571, s. 2.

(28) To Enter Lease Purchase and Installment Purchase Contracts. — Local boards may enter into lease purchase and installment purchase contracts as provided in G.S. 115C-528.

(28a) To Enter Guaranteed Energy Savings Contracts for Energy Conservation Measures. — Local boards may purchase energy conservation measures by guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(29) To Authorize the Observance of a Moment of Silence. — To afford students and teachers a moment of quiet reflection at the beginning of each day in the public schools, to create a boundary between school time and nonschool time, and to set a tone of decorum in the classroom that will be conducive to discipline and learning, each local board of education may adopt a policy to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.

(29a) To Encourage the Display of the United States and North Carolina Flags, and to Encourage the Recitation of the Pledge or Oath of Allegiance. — Local boards of education are encouraged to adopt policies to (i) provide for the display of the United States and North Carolina flags in each classroom, (ii) provide the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

(29b) To Ensure Freedom of Religion. — No local board of education shall have a policy of denying, or that effectively prevents participation in, prayer in public schools by individuals on a voluntary basis, except when necessary to maintain order and discipline. No local board of education shall encourage or require any person to participate in prayer or influence the form or content of any prayer in public schools. This subdivision shall not be construed to direct any local board of education to take any action in violation of the Constitutions of North Carolina or the United States.

(30) To Appoint Advisory Councils. — Local boards of education are authorized to appoint advisory councils as provided in G.S. 115C-55.

(31) Local boards of education shall determine the hours of employment for teacher assistants. The Legislative Commission of Salary Schedules for Public School Employees shall include in its report to the

General Assembly recommendations regarding hours of employment for teacher assistants and other employees.

(32) To Refer All Students Who Drop Out of the Public Schools to Appropriate Services. — Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services.

(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. — Each local board of education shall establish at least one alternative learning program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long-term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's policies and guidelines developed under G.S. 115C-12(24). Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard.

Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction.

(33) Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, pursuant to the provisions of G.S. 115C-98(b).

(33a) To Approve and Use Textbooks Not Adopted by State Board of Education. — Local boards of education shall have the authority to select, procure, and use textbooks not adopted by the State Board of Education as provided in G.S. 115C-98(b1).

(34) To Encourage the Business Community to Facilitate Student Achievement. — Local boards of education, in consultation with local business leaders, shall develop voluntary guidelines relating to after-school employment. The guidelines may include an agreement to limit the number of hours a student may work or to tie the number of hours a student may work to his academic performance, school attendance, and economic need. The General Assembly finds that local boards of education do not currently have information regarding how many of

their students are employed after school and how many hours they work; the General Assembly urges local boards of education to compile this critical information so that the State can determine to what extent these students' work affects their school performance.

Local boards of education shall work with local business leaders to encourage employers to provide parents or guardians with time to attend conferences with their children's teachers.

The Superintendent of Public Instruction shall provide guidance and technical assistance to the local boards of education on carrying out the provisions of this subdivision.

(35) To produce school building improvement reports. — Each administrative unit shall produce school building improvement reports for each school building in the local school administrative unit, in accordance with G.S. 115C-12(9)c3.

(36) To Report All Acts of School Violence. — Local boards of education shall report all acts of school violence to the State Board of Education in accordance with G.S. 115C-12(21).

(37) To purchase group accident and health insurance for students. — Local boards of education may purchase group accident, group health, or group accident and health insurance for students in accordance with G.S. 58-51-81.

(38) To Establish School Improvement Teams. — Local boards shall adopt a policy to ensure that each principal has established a school improvement team under G.S. 115C-105.27 and in accordance with G.S. 115C-288(l). Local boards shall direct the superintendent or the superintendent's designee to provide appropriate guidance to principals to ensure that these teams are established and that the principals work together with these teams to develop, review, and amend school improvement plans for their schools. (1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 7; c. 1185; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 538; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2, 1; c. 1034, s. 16; 1985, c. 436, s. 1; c. 479, ss. 55(c)(4), 55(c)(6); c. 637; c. 757, s. 145(i); 1985 (Reg. Sess., 1986), c. 975, ss. 3, 11; c. 1014, s. 58; 1987, c. 340; c. 414, s. 2; c. 571, s. 2; c. 738, s. 182; 1987 (Reg. Sess., 1988), c. 1025, ss. 9, 15; c. 1086, s. 89(b); 1989, c. 585, s. 2; c. 752, s. 65(b); 1989 (Reg. Sess., 1990), c. 1074, s. 23(b); 1991, c. 706, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(f); 1993, c. 114, s. 1; c. 321, s. 139(c); 1993 (Reg. Sess., 1994), c. 716, s. 2; c. 775, s. 5; 1995, c. 455, s. 1; c. 497, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 716, ss. 11, 12, 17; 1997-443, s. 8.38(j)-(l); 1998-194, s. 3; 1998-202, s. 12; 1999-96, s. 7; 1999-237, s. 8.25(a); 1999-373, s. 3; 1999-397, s. 4; 1999-456, s. 35; 2000-67, s. 8.18(b); 2000-140, s. 77.)

Editor's Note. — For note discussing effective date of subdivision (12) as being when the components of the standard course of study have been fully incorporated and implemented as part of the Basic Education Program, see the main volume.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 8.18(b), effective July 1, 2000, in subdivision (18), inserted "and shall, to the maximum ... reporting requirements" in the second paragraph and added the last paragraph.

Session Laws 2000-140, s. 77, effective July 21, 2000, substituted "required of teachers" for "produced by or required" in the last paragraph in subdivision (18).

SUBCHAPTER IV. EDUCATION PROGRAM.

Article 8.

General Education.

Part 1. Courses of Study.

§ 115C-81. Basic Education Program.

Editor's Note. —
Session Laws 1999-237, s. 8.36, provides in part that the state Board of Education shall establish a pilot program in up to five local school administrative units for the purpose of determining whether revisions in the present school accountability model under the ABCs Plan are likely to result in more students demonstrating mastery of grade level subject matter and skills on the end-of-grade tests or demonstrating mastery of course subject matter or skills on end-of-course tests. In selecting pilot sites, the Board shall consider geographical areas of the State and urban and rural areas. Personnel in schools that participate in the pilot program and that achieve the pilot program school accountability goals shall be eligible to receive financial awards for that achievement. The State Board shall evaluate the pilot program on an annual basis regarding its implementation in each participating unit, student performance, whether the student performance of students who qualify for free or reduced lunch is improved, and how the student performance in pilot program schools compares with the statewide results under the ABCs Plan.

Session Laws 2000-67, s. 7.4(2), authorizes the Director of the Budget to include in the proposed continuation budget for the 2001-2003 fiscal biennium the funds necessary to provide financial awards for personnel in schools that obtain the goals of this pilot program. Session Laws 2000-67, s. 8.28(i), in part, directs the Education Cabinet, through its Research Council, to review the results of the pilot program and to make recommendations to the Joint Legislative Education Oversight Committee by March 15, 2002, on the most cost-effective methods of improving student achievement among targeted groups.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 5(e), effective July 1, 2000, provides that if federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2000-2001 fiscal year, then those funds are to be used to establish an Abstinence Until Marriage Education Program, to be administered by the Department of Public Instruction, which shall oversee the implementation of the program and subdivision (e1)(4) of this section.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

OPINIONS OF ATTORNEY GENERAL

Scope of Regulation. — The section regulates instruction within the comprehensive school health education program whether conducted on or off campus but not after-school activities or unrelated instruction or materials such as those provided by a nurse engaged in providing medical assistance to a student. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

Provisions Applicable to Grades 10 through 12. — While the paragraphs of subsection (e1) of this section dealing with the "comprehensive school health education program" apply only to grades kindergarten through nine, there are other provisions in that subsection that would apply to all grades. For example, the duty which subdivision (e1)(3) imposes on the State Board to develop objectives for instruction in the prevention of sexually-transmitted diseases is not limited to the comprehensive school health program required in grades kindergarten through nine. Likewise, the obligation which subdivision (e1)(4) imposes on the State Board to maintain a list of recommended abstinence-until-marriage curricula and materials is not limited to any specific grades. Finally, subdivision (e1)(7) grants parents and guardians the right to review the objectives and materials associated with certain health related programs and withhold their consent to the children's participation in such programs irrespective of the ages or grades of their children. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

Abstinence Education. — By the plain language of the statute, abstinence education is a required part of the comprehensive school health program which must be taught at all schools. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

Comprehensive Sex Education Program. — The section does not limit the circumstances under which an LEA may initiate a comprehensive sex education program. An LEA may decide to offer a comprehensive sex education program whenever the local board of education deems it appropriate. That decision may be in response to a parent's request or a proposal from the superintendent or it may arise from the independent judgment of a member of the board. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

Yearly Public Hearings Not Required. — The provisions of subdivision (e1)(6) of this section do not require local boards of education to conduct public hearings every year before offering a "comprehensive sex education program." If the local board specifically decides to "adopt" such a program on a yearly basis, it must comply with the statute and hold the requisite hearing prior to each annual adoption. The statute, however, does not require the LEA to hold a public hearing on the comprehensive sex education program if the local board does not make changes in the objectives or materials in that program. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

Part 2. Calendar.

§ 115C-84.2. School calendar.

(a) **(Applicable to all school years beginning with the 2000-2001 school year)** School Calendar. — Each local board of education shall adopt a school calendar consisting of 220 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) **(See editor's note)** A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

(2) A minimum of 10 annual vacation leave days.

(3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.

(4) Eight days, as designated by the local board, for use as teacher workdays, additional instructional days, or other lawful purposes. A local board may delegate to the individual schools some or all of the

eight days to schedule under subdivision (5) of this subsection. A local board may schedule different purposes for different personnel on any given day and is not required to schedule the same dates for all personnel.

(5) The remaining days scheduled by each school's principal for any of the purposes allowed under subdivision (4) of this subsection. Before scheduling these days, the principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. However, if during the last two years the local school administrative unit has made up an average of at least eight days for school closing because of inclement weather, the local board may designate up to two of these days as additional make-up days to be scheduled after the last day of student attendance.

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days.

(b) Limitations. — The following limitations apply when developing the school calendar:

(1) The total number of teacher workdays for teachers employed for a 10 month term shall not exceed 200 days.

(2) The calendar shall include at least 42 consecutive days when teacher attendance is not required unless: (i) the school is a year-round school; or (ii) the teacher is employed for a term in excess of 10 months. At the request of the local board of education or of the principal of a school, a teacher may elect to work on one of the 42 days when teacher attendance is not required in lieu of another scheduled workday.

(3) School shall not be held on Sundays.

(4) Veteran's Day shall be a holiday for all students enrolled in the public schools.

(c) Emergency Conditions. — During any period of emergency in any section of the State where emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools.

(d) Opening and Closing Dates. — Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. Different opening and closing dates may be fixed for schools in the same administrative unit.

Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days. (1997-443, s. 8.38(c); 1998-212, s. 9.18(b); 1999-373, s. 1; 1999-463, Ex. Sess., s. 7A.)

Version of Subsection (a) Applicable until 2000-2001 School Year. — The version of subsection (a) set out above applies to all school years beginning with the 2000-2001 school year. The version of subsection (a) applicable to all school years until the 2000-2001 school year, reads as follows:

"(a) **(Applicable until the 2000-2001 school year)** School calendar — Each local board of education shall adopt a school calendar consisting of 220 days all of which shall fall within the fiscal year. A school calendar shall include the following:

"(1) **(For certain school administrative units, see note)** A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

"(2) A minimum of 10 annual vacation leave days.

"(3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.

"(4) Ten days, as designated by the local board, for use as teacher workdays, additional instructional days, or other lawful purposes. A local board may delegate to the individual schools some or all of the 10 days to schedule under subdivision (5) of this subsection. A local board may schedule different purposes for different personnel on any given day and is not required to schedule the same dates for all personnel.

"(5) The remaining days shall be scheduled by each individual school by the school's principal in consultation with the school improvement team. Days may be scheduled for any of the purposes allowed under subdivision (4) of this subsection. Days may be scheduled for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel.

"Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

"Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days."

Temporary Amendment to Subdivision (a)(1) for Certain Local School Administrative Units. — For the local school administrative units declared by the President of the United States to be disaster area as a result of Hurricane Floyd, from August 15, 1999, to August 15, 2000, subdivision (a)(1) of this section reads as follows:

"A minimum of either 180 days or 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather."

See ss. 7A (a) to (d) of Session Laws 1999-463, Extra Session.

The North Carolina counties that were declared a major disaster area as a result of Hurricane Floyd by the President of the United States are:

Alamance, Anson, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Tyrrell, Union, Vance, Wake, Warren, Washington, Wayne, and Wilson.

Session Laws 1999-463, enacted at the 1999 Extra Session held on December 15 and 16, 1999, provides in s. 1 that the act shall be known as the Hurricane Floyd Recovery Act of 1999.

ARTICLE 8B.

School-Based Management and Accountability Program.

Part 2. School-Based Management.

§ 115C-105.27. Development and approval of school improvement plans.

In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants shall be elected by their respective groups by secret ballot. Unless the local board of education has adopted an election policy, parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. The strategies for improving student performance:

(1) Shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while mentors and teachers mentored are meeting;

(2) Shall include a plan to address school safety and discipline concerns in accordance with the safe school plan developed under Article 8C of this Chapter;

(3) May include a decision to use State funds in accordance with G.S. 115C-105.25;

(4) Shall include a plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school;

(5) May include requests for waivers of State laws, rules, or policies for that school. A request for a waiver shall meet the requirements of G.S. 115C-105.26.

Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the local board of education only if the proposed school improvement plan has the approval of a majority of the staff who voted on the plan.

The local board of education shall accept or reject the school improvement plan. The local board shall not make any substantive changes in any school improvement plan that it accepts. If the local board rejects a school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board to accept or reject. If no school improvement plan is accepted for a school within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school. The General Assembly urges the local board to utilize the school's proposed school improvement plan to the maximum extent possible when developing such a plan.

A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans. (1989, c. 778, s. 3; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(b); 1993, c. 38, s. 1; c. 263, s. 2; c. 321, s. 144.2(b); 1995, c. 272, s. 3; c. 450, s. 13; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3; 1997-159, s. 1; 1997-443, s. 8.29(r)(2); 1999-271, s. 1; 1999-397, s. 1; 2000-67, s. 8.1.)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 8.1, effective July 1, 2000, rewrote the first paragraph.

Part 3. School-Based Accountability.

§ 115C-105.39. Dismissal or removal of personnel; appointment of interim superintendent.

CASE NOTES

Sovereign Immunity of County Board. — Using an analysis of the organizational and financial structure of the local school boards under both case and statutory law, the court determined that defendant board was an arm of the state for purposes of a suit seeking FLSA damages, and as such, it was entitled to sovereign immunity from a suit for monetary relief. Cash v. Granville County Bd. of Educ., — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 4852 (E.D.N.C. March 8, 2000).

§ 115C-105.46. State Board of Education responsibilities.

In order to implement this Article, the State Board of Education:

(1) Shall adopt guidelines for developing local plans under G.S. 115C-105.47.

(2) Shall provide, in cooperation with the Board of Governors of The University of North Carolina, ongoing technical assistance to the local

school administrative units in the development, implementation, and evaluation of their local plans under G.S. 115C-105.47.

(3) May require a local board of education to withhold the salary of any administrator or other employee of a local school administrative unit who delays or refuses to prepare and implement local safe school plans in accordance with G.S. 115C-105.47.

(4) May revoke the certificate of the superintendent, pursuant to G.S. 115C-274(c), for failure to fulfill the superintendent's duties under a local safe school plan.

(5) Shall adopt policies that define who is an at-risk student. (1997-443, s. 8.29(r)(1); 1999-397, s. 2; 2000-140, s. 22.)

Effect of Amendments. — Session Laws 2000-140, s. 22, effective July 21, 2000, substituted "G.S. 115C-105.47" for "G.S. 115C-105.57" in subdivision (2).

Article 9.

Special Education.

Part 1. State Policy.

§ 115C-106. Policy.

CASE NOTES

Equal Opportunity to Learn is All That is Required. — In North Carolina the special education program must provide the child with an equal opportunity to learn if that is reasonably possible, ensuring that the child has an opportunity to reach her full potential commensurate with the opportunity given other children. This standard does not require a school district to develop a "utopian educational program" for the student with special needs any more so than would be required if the student were not handicapped. CM ex rel. JM v. Board of Educ., 85 F. Supp. 2d 574 (W.D.N.C. 1999).

OPINIONS OF ATTORNEY GENERAL

The selection of the LEA Representative required to be part of the IEP Team, under special education law and regulations, is ultimately a matter of local discretion, although such discretion must of course be exercised consistent with the potential role of the LEA Representative on any particular child's IEP Team. Such informed exercise of local discretion, on a case-by-case basis, is completely congruent with the goals of the IDEA. See opinion of Attorney General to Brad Sneeden Deputy Superintendent N. C. Department of Public Instruction, 1998 N.C.A.G. 50 (12/1/98).

§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the Department of Juvenile Justice and Delinquency Prevention, the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise and approve any plans for special education and related services to those residents.

The Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on this department and when other procedural due process requirements, substantially equivalent to those of G.S. 115C-116, are assured in programs of special education and related services furnished to children with special needs served by this department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a "local educational agency" unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106(b). The plan shall include:

(1) A census of the children with special needs in the State, as required by subsection (j) of this section;
(2) A procedure for diagnosis and evaluation of each child;
(3) An inventory of the personnel and facilities available to provide special education for these children;
(4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;
(5) Standards for the education of children with special needs;
(6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and
(7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment pursuant to subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules covering:

(1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;
(2) Minimum standards for the individualized educational program for all children with special needs other than for the pregnant children, and for the educational program for the pregnant children, who receive special education and related services; and
(3) Any other rules as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

(1) A statement of the extent to which the required education and services will be provided directly by the agency;
(2) A statement of the extent to which standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and
(3) The means by which the agency will contract to provide, at levels meeting standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By rule, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to these annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

(1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and

(2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except those fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention shall not prevent that department from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, to be taken in each school year. Suspected children are those in the formal process of being identified, evaluated or diagnosed as children with special needs. The census shall be conducted annually and shall be completed not later than October 15, and shall be submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than pregnant children, and of educational programs in meeting the educational needs of the pregnant children.

(*l*) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j).)

Effect of Amendments. —

Session Laws 2000-137, s. 4(j), effective July 20, 2000, substituted "department" for "Department or Office" in the fifth paragraph in subsection (a) and in subsection (i); and substituted "Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention" for "Departments of Health and Human Services and Correction and the Office of Juvenile Justice" and "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" throughout the section.

OPINIONS OF ATTORNEY GENERAL

The selection of the LEA Representative required to be part of the IEP Team, under special education law and regulations, is ultimately a matter of local discretion, although such discretion must of course be exercised consistent with the potential role of the LEA Representative on any particular child's IEP Team. Such informed exercise of local discretion, on a case-by-case basis, is completely congruent with the goals of the IDEA. See opinion of Attorney General to Brad Sneeden Deputy Superintendent N. C. Department of Public Instruction, 1998 N.C.A.G. 50 (12/1/98).

Part 2. Nondiscrimination in Education.

§ 115C-111. Free appropriate education for all children with special needs.

No child with special needs between the ages specified by G.S. 115C-109 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian resides or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention, the local educational agency shall confer with the appropriate Department of Health and Human Services or Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in said program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115C-116. Every child with special needs shall be entitled to attend these nonresidential schools or programs and receive from them free appropriate public education. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1997-443, s. 11A.118(a); 1998-202, s. 4(h); 2000-137, s. 4(k).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(k), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" twice.

§ 115C-113. Diagnosis and evaluation; individualized education program.

(a) Before taking any action described in subsection (b), below, each local educational agency shall cause a multi-disciplinary diagnosis and evaluation to be made of the child. The State Board of Education shall establish special, simplified procedures for the diagnosis and evaluation of the pregnant child, which procedures shall focus on the particular needs of the pregnant child and shall exclude those procedures which are not pertinent to the pregnant. The local educational agency shall use the diagnosis and evaluation to determine if the child has special needs, diagnose and evaluate those needs, propose special education programs to meet those needs, and provide or arrange to provide such programs. A multi-disciplinary diagnosis and evaluation is one which includes, without limitation, medical (if necessary), psychological (if necessary) and educational assessments and recommendations; such an evaluation may include any other assessments as the Board may, by rule or regulation, require.

All testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with special needs will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(b) An initial multi-disciplinary diagnosis and evaluation based on rules developed by the Board shall be made before any such child is placed in a special education program, removed from such a program and placed in a regular school program, transferred from one type of special education program to another, removed from a school program for placement in a nonschool program, or otherwise tracked, classified, or treated as a child with special needs.

(c) Referral of any child shall be in writing, signed by the person requesting diagnosis and evaluation, setting forth the reasons for the request; it shall be sent or delivered to one of the following: the child's teacher, the principal of the school to which the child is, has been or will be assigned, or the superintendent of the affected local educational agency or his designee. The local educational agency shall send a written notice to the parent or guardian describing the evaluation procedure to be followed and requesting consent for the evaluation. If the parents or guardian consent, the diagnosis and evaluation may be undertaken; if they do not, the local educational agency may obtain a due process hearing pursuant to G.S. 115C-116 on the failure of the parent or guardian to consent.

The local educational agency shall provide or cause to be provided, as soon as possible after receiving consent for evaluation, a diagnosis and evaluation appropriate to the needs of the child unless the parents or guardian have objected to such evaluation. If at the conclusion of the evaluation, the child is determined to be a child with special needs, the local educational agency shall within 30 calendar days convene an individualized education program committee. The purpose of the meeting shall be to propose the special education and related services for the child. An interpretation of the multi-disciplinary diagnosis and evaluation will be made to the parent or guardian during the meeting. The proposal shall set forth the specific benefits expected from such a program, a method for monitoring the benefits, and a statement regarding conditions which will be considered indicative of the child's readiness for participation in regular classes.

After an initial referral is made, the provision of special education and related services shall be implemented within 90 calendar days to eligible students, unless the parents or guardian refuse to consent to evaluation or placement or the parent or local educational agency requests a due process hearing.

Within 12 months after placement in a special education program, and at least annually thereafter, those people responsible for developing the child's individualized education program, or educational program for the pregnant, shall review the child's progress and, on the basis of previously stated expected benefits, decide whether to continue or discontinue the placement or program. If the review indicates that the placement or program does not benefit the child, the appropriate reassignment or change in the prescribed program shall be recommended to the parents or guardian.

The local educational agency shall keep a complete written record of all diagnostic and evaluation procedures attempted, their results, the conclusions reached, and the proposals made.

(d) The local educational agency shall furnish the results, findings, and proposals, as described in the individualized education program based on the diagnosis and evaluation to the parents or guardian in writing in the parents' or guardian's native language or by their dominant mode of communication, prior to the parent or guardian giving consent for initial placement in special education and related services. Prior notice will be given to the parents or guardian by the local educational agency before any change in placement.

A reevaluation must be completed at least every three years to determine the appropriateness of the child's continuing to receive special education and related services.

(e) Each local educational agency shall make and keep current a list of all children evaluated and diagnosed pursuant to this section who are found to have special needs and of all children who are receiving home, hospital, institutional or other special education services, including those being educated within the regular classroom setting or in other special education programs.

(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the pregnant children, and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term "individualized educational program" means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent.

(g) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.24(e).

(h) Each local educational agency shall prepare educational programs for the pregnant children. The State Board of Education shall promulgate rules and regulations specifically to address the preparation of these educational programs, which rules and regulations shall include specific standards for ensuring that the individual educational needs of each child are addressed. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, s. 4; 1989, c. 388; 1991, c. 142, s. 1; c. 761, s. 35; 1996, 2nd Ex. Sess., c. 18, s. 18.24(e); 1997-443, s. 11A.118(a); 1998-202, s. 4(i); 2000-137, s. 4(l).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(*l*), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subsection (f).

OPINIONS OF ATTORNEY GENERAL

The selection of the LEA Representative required to be part of the IEP Team, under special education law and regulations, is ultimately a matter of local discretion, although such discretion must of course be exercised consistent with the potential role of the LEA Representative on any particular child's IEP Team. Such informed exercise of local discretion, on a case-by-case basis, is completely congruent with the goals of the IDEA. See opinion of Attorney General to Brad Sneeden Deputy Superintendent N. C. Department of Public Instruction, 1998 N.C.A.G. 50 (12/1/98).

§ 115C-113.1. Surrogate parents.

In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public Instruction, the Secretary of Health and Human Services, and the Secretary of Juvenile Justice and Delinquency Prevention, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent. (1987 (Reg. Sess., 1988), c. 1079, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 4(j); 2000-137, s. 4(m).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(m), effective July 20, 2000, substituted "Secretary of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice."

§ 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.

The board shall adopt rules and regulations to assure that:

(1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.

(2) No child shall be placed by the Board or by the local educational agency in a private or out-of-state school unless the Board has

determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.

(3) If the placement of the child in a private school, out-of-state school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost. (1977, c. 927, s. 1; 1979, 2nd Sess., c. 1299, s. 2; 1981, c. 423, s. 1; 1983, c. 768, s. 7; 1987 (Reg. Sess., 1988), c. 1079, s. 3; 1997-443, s. 11A.118(a); 1998-202, s. 4(k); 2000-137, s. 4(n).)

Effect of Amendments. — Session Laws 2000-137, s. 4(n), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subdivision (3).

Part 3. Appeals.

§ 115C-116. Notice of decisions; mediation, administrative review, and judicial review of disagreements.

CASE NOTES

Cited in Kirkpatrick v. Lenoir County Bd. of Educ., 216 F.3d 380 (4th Cir. 2000).

Part 5. Council on Educational Services for Exceptional Children.

§ 115C-121. Establishment; organization; powers and duties.

(a) There is hereby established an Advisory Council to the State Board of Education to be called the Council on Educational Services for Exceptional Children.

(b) The Council shall consist of 23 members to be appointed as follows: five ex officio members; two members appointed by the Governor; two members of the Senate appointed by the President Pro Tempore; two members of the House of Representatives appointed by the Speaker of the House; and 12 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of the Department of Health and Human Services or the Secretary's designee;

(1a) A representative of the Department of Juvenile Justice and Delinquency Prevention, appointed by the Governor;

(2) The Secretary of the Department of Correction or the Secretary's designee;

(3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and

(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms. The initial term of office of the person appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly.

(c) The Council shall meet in offices provided by the Department of Public Instruction on a date to be agreed upon by the members of the Council from meeting to meeting: Provided, however, that the Council shall meet no less than once every three months. The Department of Public Instruction shall provide the necessary secretarial and clerical staff and supplies to accomplish the objectives of the Council.

(d) The duties of the Council shall be to:

(1) Advise the Board with respect to unmet needs within the State in the education of children with special needs, as defined in this Chapter.

(2) Comment publicly on rules and regulations proposed for issuance by the Board regarding special education and related services and the procedures for issuing State and federal funds for special education and related services.

(3) Assist the Board in developing and reporting such data and evaluations as may assist the Commissioner of Education in the performance of his duties under Part B, Education of the Handicapped Act, as amended by Public Law 94-142.

(4) Comment publicly on State special education plans developed pursuant to Public Law 94-142 and State law. (1973, c. 1079, ss. 1-4; 1977, c. 646, ss. 1-5, 1981, c. 423, s. 1; 1991, c. 739, s. 12; 1991 (Reg. Sess., 1992), c. 1038, s. 13; 1997-443, s. 11A.118(a); 1998-202, s. 4(l); 2000-137, s. 4(o).)

Effect of Amendments. — Session Laws 2000-137, s. 4(o), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subdivision (b)(1a).

Part 10. State and Local Relationships.

§ 115C-139. Interlocal cooperation.

(a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings pursuant to the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes or into undertakings with a State agency such as the Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children.

(b) Local educational agencies may establish special education and related programs for children with special needs aged birth through four and 19 through 21 inclusive. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1997-443, s. 11A.118(a); 1998-202, s. 4(m); 2000-137, s. 4(p).)

Effect of Amendments. — Session Laws 2000-137, s. 4(p), effective July 20, 2000, in subsection (a), deleted "Office of Juvenile Justice or the" following "State agency such as the" and inserted "Juvenile Justice and Delinquency Prevention."

Article 10A.

Testing.

Part 1. Commission on Testing.

§§ 115C-174.1 through 115C-174.6: Repealed by Session Laws 1995, c. 524, s. 1.

Editor's Note. — Sections 115C-174.2 through 115C-174.6 had inadvertently been set out in the main volume, under the repeal line for §§ 115C-174.1 through 115C-174.6. The repeal line is correct; the sections were repealed by Session Laws 1995, c. 524, s. 1. The section text for §§ 115C-174.2 through 115C-174.6 has been removed.

Part 2. Statewide Testing Program.

§ 115C-174.11. Components of the testing program.

(a) Assessment Instruments for First and Second Grades. — The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests.

(b) Competency Testing Program.

(1) The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.

(2) The tests shall be administered annually to all ninth grade students in the public schools. Students who fail to attain the required minimum standard for graduation in the ninth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the ninth grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.

(3) The State Board of Education may develop and validate alternate means and standards for demonstrating minimum competence. These standards, which must be more difficult than the tests adopted pursuant to subdivision (1) of this subsection, may be passed by students in lieu of the testing requirement of subdivision (2) of this subsection.

(4) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.14.

(c) Annual Testing Program.

(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12. Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade. This assistance shall be calculated to prepare the students to pass the competency test administered under subsection (b) of this section. Notwithstanding subsection (a) of this section, the State Board shall develop and implement a study allowing selected local school administrative units that volunteer to administer a standardized test in May, 12 months prior to the third grade end-of-grade test, in order to establish a baseline that will be used to measure academic growth at the end of third grade. Initially, the State Board shall select 12 volunteer local school administrative units that are diverse in geography and size to participate in the study. If the State Board determines that a standardized test administered in May, 12 months prior to the third grade end-of-grade test, is more reliable than a standardized test administered at the beginning of third grade for the purpose of measuring academic growth, the State Board may change the test date for additional local school units. The State Board shall report the results of the study to the Joint Legislative Education Oversight Committee by October 15, 2000.

Baseline measurements administered in May, 12 months prior to the third grade end-of-grade test, are not public records as provided in Chapter 132 of the General Statutes.

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national

indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states. (1977, c. 522, s. 1; c. 541, s. 1; 1981, c. 423, s. 1; 1983, c. 627, s. 1; 1985, c. 409, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1987, c. 738, s. 180(a); 1987 (Reg. Sess., 1988), c. 1086, s. 77(a); 1989, c. 778, ss. 4, 5; 1995, c. 524, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 18.14; 1998-212, s. 9.15(b); 1998-220, ss. 6, 11; 2000-140, ss. 21(a), 21(b).)

Editor's Note. —

Session Laws 1998-220, ss. 6 and 11, effective November 5, 1998, purported to amend § 115C-174.21. However, the amendments appear to have been intended for this section. Subsequently, Session Laws 2000-140, ss. 21(a) and 21(b) modified Session Laws 1998-220, ss. 6 and 11, to provide that they were amending this section. The section is set out above as amended by Session Laws 2000-140.

Effect of Amendments. —

Session Laws 1998-220, ss. 6 and 11, effective November 5, 1998, as amended by Session Laws 2000-140, ss. 21(a) and 21(b), effective July 21, 2000, substituted "ninth" for "tenth" in three places in subdivision (b)(2), and inserted the third and fourth sentences in subdivision (c)(1).

Article 16.

Optional Programs.

Part 6A. Charter Schools.

§ 115C-238.29D. Final approval of applications for charter schools.

(a) The State Board shall grant final approval of an application if it finds that the application meets the requirements set out in this Part or adopted by the State Board of Education and that granting the application would achieve one or more of the purposes set out in G.S. 115C-238.29A. The State Board shall act by March 15 of a calendar year on all applications and appeals it receives prior to February 15 of that calendar year.

(b) The State Board shall authorize no more than five charter schools per year in one local school administrative unit. The State Board shall authorize no more than 100 charter schools statewide. If more than five charter schools in one local school administrative unit or more than 100 schools statewide meet the standards for final approval, the State Board shall give priority to applications that are most likely to further State education policies and to strengthen the educational program offered in the local school administrative units in which they are located.

(c) The State Board of Education may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. The State Board shall not allocate any funds to the school until the school has obtained space.

(d) The State Board of Education may grant the initial charter for a period not to exceed five years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed five years each. A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education. Beginning with the charter school's second year of operation and annually thereafter, the State Board shall allow a charter school to increase its enrollment by ten percent (10%) of the school's previous year's enrollment or as is otherwise provided in the charter.

This enrollment growth shall not be considered a material revision of the charter application and shall not require the prior approval of the State Board.

An enrollment growth of greater than ten percent (10%) shall be considered a material revision of the charter application. The State Board may approve an enrollment growth of greater than ten percent (10%) only if the State Board finds that:

(1) The actual enrollment of the charter school is within ten percent (10%) of its maximum authorized enrollment;
(2) The charter school has commitments for ninety percent (90%) of the requested maximum growth;
(3) The board of education of the local school administrative unit in which the charter school is located has had an opportunity to be heard by the State Board of Education on any adverse impact the proposed growth would have on the unit's ability to provide a sound basic education to its students;
(4) The charter school is not currently identified as low-performing;
(5) The charter school meets generally accepted standards of fiscal management; and
(6) It is otherwise appropriate to approve the enrollment growth. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 3; 2000-67, s. 8.23.)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 8.23, effective July 1, 2000, in subsection (d), added the second paragraph and subdivisions (d)(1) through (6).

§ 115C-238.29E. Charter school operation.

OPINIONS OF ATTORNEY GENERAL

Activities Limited Prior to Approval of Charter Application. — A charter school applicant may not legally have an enrollment period and conduct its lottery prior to the final approval of its application by the State Board of Education. See opinion of Attorney General to Michael E. Ward, State Superintendent of Public Instruction, 1998 N.C.A.G. 28 (6/23/98).

§ 115C-238.29F. General requirements.

OPINIONS OF ATTORNEY GENERAL

This section requires the board of directors of a nonprofit corporation that holds the charter to retain the authority to approve or disapprove the employment of the teachers whom a "for profit" management company selects to teach at the school. See opinion of Attorney General to The Honorable Wib Gulley North Carolina Senate, 1998 N.C.A.G. 9 (2/12/98).

This section requires the board to retain the authority to demand removal of a teacher in the case of gross nonperformance or gross misperformance if the management company fails to act upon the board's request to effect a removal in such a circumstance. See opinion of Attorney General to The Honorable Wib Gulley North Carolina Senate, 1998 N.C.A.G. 9 (2/12/98).

Persons employed and paid by a for-profit management company are not charter school employees and not subject to discharge by a non-profit board of directors; a dissatisfied board's only recourse would be some contractual remedy against the management company. See opinion of Attorney General to The Honorable Wib Gulley North Carolina Senate, 1998 N.C.A.G. 9 (2/12/98).

Teacher Narrowly Construed. — Because the General Assembly intended the term "teacher" as used in subdivision (e)(3) of this section to include only classroom teachers, other school personnel, such as principals, are not entitled to the same leaves of absence granted teachers. See opinion of Attorney General to Douglas S. Punger, 1998 N.C.A.G. 23 (5/5/98).

A five month instructional term does not satisfy the statutory requirement for 180 days of instruction irrespective of the number of instructional hours offered during those months. See opinion of Attorney General to Mr. Brad Sneeden, Deputy Superintendent, North Carolina Department of Public Instruction, 1999 N.C.A.G. 10 (3/15/99).

§ 115C-238.29H. State and local funds for a charter school.

OPINIONS OF ATTORNEY GENERAL

A local school board which is authorized to levy a supplemental tax is obligated to transfer a share of those tax monies collected to a charter school on a per pupil basis as required by this section. See opinion of Attorney General to C. Frank Goldsmith, Jr., Goldsmith, Goldsmith & Dews, P.A., 1998 N.C.A.G. 39 (9/23/98).

A board of county commissioners may not appropriate funds to charter schools for capital outlay projects. See opinion of Attorney General to Thomas B. Griffin, Esq., Griffin & Griffin, 1998 N.C.A.G. 20 (4/15/98).

§ 115C-238.29J. Public and private assistance to charter schools.

(a) Local boards of education are authorized and encouraged to provide administrative and evaluative support to charter schools located within their local school administrative units.

(b) Private persons and organizations are encouraged to provide funding and other assistance to the establishment or operation of charter schools.

(c) The State Board of Education shall direct the Department of Public Instruction to provide guidance and technical assistance, upon request, to applicants and potential applicants for charters.

(d) The State Board of Education shall direct the Department of Public Instruction to notify the Department of Revenue when the State Board of Education terminates, fails to renew, or grants a charter for a charter school. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 10; 2000-72, s. 3.)

Effect of Amendments. — Session Laws 2000-72, s. 3, effective October 1, 2000, added subsection (d).

Article 17.

Supporting Services.

Part 1. Transportation.

§ 115C-250. Authority to expend funds for transportation of children with special needs.

(a) The State Board of Education and local boards of education may expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide such children with a free appropriate education, including its duty under G.S. 115C-115. At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of exceptional children may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules and regulations concerning the construction and equipment of these buses and minibuses.

The Departments of Health and Human Services, Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide such children with a free appropriate public education.

If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses, to the program.

(b) Funds appropriated for the transportation of children with special needs may be used to pay transportation safety assistants employed in accordance with the provisions of G.S. 115C-245(e) for buses to which children with special needs are assigned. (1955, c. 1372, art. 21, s. 6; 1973, c. 1351, s. 1; 1975, c. 678, ss. 9, 10; 1977, c. 830, s. 1; 1979, c. 719, ss. 1-4; 1979, 2nd Sess., c. 1156; 1981, c. 423, s. 1; c. 912, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 31; 1985, c. 479, s. 26(b); 1987, c. 769; 1997-443, s. 11A.118(a); 1998-202, s. 4(n); 2000-137, s. 4(q).)

Effect of Amendments. — Session Laws 2000-137, s. 4(q), effective July 20, 2000, substituted "Departments of Health and Human Services, Juvenile Justice and Delinquency Prevention, and Correction" for "Department of Health and Human Services, the Office of Juvenile Justice, and the Department of Correction" in the second paragraph in subsection (a).

SUBCHAPTER V. PERSONNEL.

Article 20.

Teachers.

§ 115C-296. Board sets certification requirements.

(a) The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes: Provided, that the State Board of Education shall require each applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. The State Board of Education shall make the standard initial certification exam sufficiently rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has adequate academic and professional preparation to teach.

(a1) The State Board shall adopt policies that establish the minimum scores for the standard examinations and other measures necessary to assess the qualifications of professional personnel as required under subsection (a) of this section. For purposes of this subsection, the State Board shall not be subject to Article 2A of Chapter 150B of the General Statutes. At least 30 days prior to changing any policy adopted under this subsection, the State Board shall provide written notice to all North Carolina schools of education and to all local boards of education. The written notice shall include the proposed revised policy.

(a2) The State Board of Education shall impose the following schedule of fees for teacher certification and administrative changes:

(1) Application for demographic or administrative changes to a certificate, $30.00.
(2) Application for a duplicate certificate or for copies of documents in the certification files, $30.00.
(3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, $55.00.
(4) Initial application for New, In-State Approved Program Graduate, $55.00.
(5) Initial application for Out-of-State certificate, $85.00.
(6) All other applications, $85.00.

The applicant must pay the fee at the time the application is submitted.

(b) **(See Note)** It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with the Board of governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

The standards for approval of institutions of teacher education shall require that teacher education programs for students who do not major in special education include demonstrated competencies in the identification and education of children with learning disabilities. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

(b1) The State Board of Education shall develop a plan to provide a focused review of teacher education programs and the current process of accrediting these programs in order to ensure that the programs produce graduates that are well prepared to teach. The plan shall include the development and implementation of a school of education performance report for each teacher education program in North Carolina. The performance report shall include at least the following elements: (i) quality of students entering the schools of education, including the average grade point average and average score on preprofessional skills tests that assess reading, writing, math and other competencies; (ii) graduation rates; (iii) time-to-graduation rates; (iv) average scores of graduates on professional and content area examination for the purpose of certification; (v) percentage of graduates receiving initial certification; (vi) percentage of graduates hired as teachers; (vii) percentage of graduates remaining in teaching for four years; (viii) graduate satisfaction based on a common survey; and (ix) employer satisfaction based on a common survey. The performance reports shall follow a common format. The performance reports shall be submitted annually. The State Board of Education shall develop a plan to be implemented beginning in the 1998-99 school year to reward and sanction approved teacher education programs and masters of education programs and to revoke approval of those programs based on the performance reports and other criteria established by the State Board of Education.

The State Board also shall develop and implement a plan for annual performance reports for all masters degree programs in education and school administration in North Carolina. To the extent it is appropriated, the performance report shall include similar indicators to those developed for the performance report for teacher education programs. The performance reports shall follow a common format.

Both plans for performance reports also shall include a method to provide the annual performance reports to the Board of Governors of The University of North Carolina, the State Board of Education, and the boards of trustees of the independent colleges. The State Board of Education shall review the schools of education performance reports and the performance reports for masters degree programs in education and school administration each year the performance reports are submitted. The State Board shall submit the performance report for the 1999-2000 school year to the Joint Legislative Education Oversight Committee by December 15, 2000. Subsequent performance reports shall be submitted to the Joint Legislative Education Oversight Committee on an annual basis by October 1.

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than five years and shall be required to obtain certification before contracting for a sixth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. The State Board shall revoke the certificate of a teacher or school administrator if the State Board receives notification from a local board or the Secretary of Health and Human Services that a teacher or school administrator has received an unsatisfactory or below standard rating under G.S. 115C-333(d). In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

(1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37 or G.S. 143B-146.5; and

(2) The assistance team assigned to that school makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates.

(e) The State Board of Education shall develop a mentor program to provide ongoing support for teachers entering the profession. In developing the mentor program, the State Board shall conduct a comprehensive study of the needs of new teachers and how those needs can be met through an orientation and mentor support program. For the purpose of helping local boards to support new teachers, the State Board shall develop and distribute guidelines which address optimum teaching load, extracurricular duties student assignment, and other working condition considerations. These guidelines shall provide that initially certified teachers not be assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties of these teachers be minimized. The State Board shall develop and coordinate a mentor teacher training program. The State Board shall develop criteria for selecting excellent, experienced, and qualified teachers to be participants in the mentor teacher training program.

(f) The State Board of Education, after consultation with the Board of Governors of The University of North Carolina, shall develop a new category of teacher certificate known as the "Masters/Advanced Competencies" certificate. To receive this certificate, an applicant shall successfully complete a masters degree program that includes rigorous academic preparation in the subject area which the applicant will teach and in the skills and knowledge expected of a master teacher or the applicant shall demonstrate to the satisfaction of the State Board that the candidate has acquired the skills and knowledge expected of a master teacher.

Persons who qualify for a "G" certificate prior to September 1, 2000, shall be awarded a "Masters/Advanced Competencies" certificate without meeting additional requirements. On and after September 1, 2000, no additional "G" certificates shall be awarded. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 686, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 6; 1987 (Reg. Sess., 1988), c. 1086, s. 96; 1989, c. 752, s. 66(a); 1993, c. 166, s. 1; c. 199, s. 4; 1995 (Reg. Sess., 1996), c. 716, s. 7; 1997-221, ss. 4(a), (b), 5, 7(a), 8, 9, 14, 17(a), (c); 1997-325, s. 1; 1997-383, s. 1; 1998-5, s. 5; 1998-131, s. 8; 1998-167, s. 1; 1999-96, s. 8; 2000-67, s. 9.2(a).)

Editor's Note. —

For note on the applicability of subsection (b), see the main volume.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 9.2(a), effective July 1, 2000, in subsection (b1), deleted "1998-99, 1999-2000, and 2000-2001 school years. The performance reports shall be submitted biannually thereafter to coincide with the Board of governors' biannual report institutional effectiveness" following "annually" in the first paragraph and added the last sentence in the third paragraph.

§ 115C-296.2. National Board for Professional Teaching Standards Certification.

(a) State Policy. -- It is the goal of the State to provide opportunities and incentives for good teachers to become excellent teachers and to retain them in the teaching profession; to attain this goal, the State shall support the efforts of teachers to achieve national certification by providing approved paid leave time for teachers participating in the process, paying the participation fee, and paying a significant salary differential to teachers who attain national certification from the National Board for Professional Teaching Standards (NBPTS).

The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. Participation in the program gives teachers the time and the opportunity to analyze in a systematic way their professional development as teachers, successful teaching strategies, and the substantive areas in which they teach. Participation also gives teachers an opportunity to demonstrate superior ability and to be compensated as superior teachers. To receive NBPTS certification, a teacher must successfully (i) complete a process of developing a portfolio of student work and videotapes of teaching and learning activities and (ii) participate in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination.

(b) Definitions. -- As used in this subsection:

(1) A "North Carolina public school" is a school operated by a local board of education, the Department of Health and Human Services, the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention or The University of North Carolina; a school affiliated with The University of North Carolina; or a charter school approved by the State Board of Education.

(2) A "teacher" is a person who:

a. Either:

1. Is certified to teach in North Carolina; or
2. Holds a certificate or license issued by the State Board of Education that meets the professional license requirement for NBPTS certification;

b. Is a State-paid employee of a North Carolina public school;

c. Is paid on the teacher salary schedule; and

d. Spends at least seventy percent (70%) of his or her work time:

1. In classroom instruction, if the employee is employed as a teacher. Most of the teacher's remaining time shall be spent in one or more of the following: mentoring teachers, doing

demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers; or

2. In work within the employee's area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction.

(c) Payment of the NBPTS Participation Fee; Paid Leave. — The State shall pay the NBPTS participation fee and shall provide up to three days of approved paid leave to all teachers participating in the NBPTS program who:

(1) Have completed three full years of teaching in a North Carolina public school; and

(2) Have (i) not previously received State funds for participating in any certification area in the NBPTS program, (ii) repaid any State funds previously received for the NBPTS certification process, or (iii) received a waiver of repayment from the State Board of Education.

Teachers participating in the program shall take paid leave only with the approval of their supervisors.

(d) Repayment by a Teacher Who Does Not Complete the Process. — A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not complete the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(e) Repayment by a Teacher Who Does Not Teach for a Year After Completing the Process. — A teacher for whom the State pays the participation fee who does not teach for a year in a North Carolina public school after completing the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not teach in a North Carolina public school for at least one year after completing the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may extend the time before which a teacher must either teach for a year or repay the participation fee if the State Board finds that the teacher is unable to teach the next year due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(f) Rules. — The State Board shall adopt policies and guidelines to implement this section. (2000-67, s. 8.16; 2000-137, s. 3.)

Editor's Note. — Session Laws 2000-67, s. 28.5, made this section effective July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-137, s. 3, effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subdivision (b)(1).

§ 115C-301. Allocation of teachers; class size.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 8.8, effective July 1, 2000, authorizes local school administrative units to use teacher positions allocated for kindergarten through second grade (i) to hire classroom and reading teachers for those grades and (ii) to otherwise reduce the student-teacher ratio in those grades. Notwithstanding the provisions of G.S. 115C-301(c), both the maximum average class size for the grade span kindergarten, first grade, and second grade, and the maximum size of an individual class within the grade span is to be 26 students.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 115C-302.1. (See note) Salary.

Local Modification. — Tyrrell County Board of Education: 2000-67, s. 8.29.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 115C-307. Duties of teachers.

(a) To Maintain Order and Discipline. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, and teacher assistants when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools. A teacher, student teacher, substitute teacher, voluntary teacher, or teacher assistant shall report to the principal acts of violence in school and students suspended or expelled from school as required to be reported in accordance with State Board policies.

(b) To Provide for General Well-Being of Students. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, and teacher assistants when given authority over some part of the school program by the principal or supervising teacher, to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children.

(c) To Provide Some Medical Care to Students. — It is within the scope of duty of teachers, including substitute teachers, teacher assistants, student teachers or any other public school employee when given such authority by the board of education or its designee, (i) to administer any drugs or medication prescribed by a doctor upon written request of the parents, (ii) to give emergency health care when reasonably apparent circumstances indicate that any delay would seriously worsen the physical condition or endanger the life of the pupil, and (iii) to perform any other first aid or life saving techniques in which the employee has been trained in a program approved by the State Board of Education: Provided, that no one shall be required to administer drugs or medication or attend life saving techniques programs.

Any public school employee, authorized by the board of education or its designee to act under (i), (ii), or (iii) above, shall not be liable in civil damages for any such authorized act or for any omission relating to such act unless such act or omission amounts to gross negligence, wanton conduct or intentional wrongdoing. Any person, serving in a voluntary position at the request of or with the permission or consent of the board of education or its designee, who has been given the authority by the board of education or its designee to act under (ii) above shall not be liable in civil damages for any such authorized act or for any omission relating to such act unless the act amounts to gross negligence, wanton conduct or intentional wrongdoing.

At the commencement of each school year, but prior to the beginning of classes, and thereafter as circumstances require, the principal of each school shall determine which persons will participate in the medical care program.

(d) To Teach the Students. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, and teacher assistants when given authority over some part of the school program by the principal or supervising teacher, to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in the public school music.

(e) To Enter into the Superintendent's Plans for Professional Growth. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, and teacher assistants when given authority over some part of the school program by the principal or supervising teacher, to enter actively into the plans of the superintendent for the professional growth of the teachers.

(f) To Discourage Nonattendance. — Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the school social worker in accordance with rules promulgated by the State Board of Education.

(g) To Make Required Reports. — A teacher shall make all reports required by the boards of education, and the local board of education. The superintendent shall not approve the voucher for a teacher's pay until the required monthly and annual reports are made.

The superintendent may require a teacher to make reports to the principal.

A teacher shall be given access to the information in the student information management system to expedite the process of preparing reports or otherwise providing information. A teacher shall not be required by the local board, the superintendent, or the principal to (i) provide information that is already available on the student information management system; (ii) provide the same written information more than once during a school year unless the information has changed during the ensuing period; or (iii) complete forms, for children with disabilities, that are not necessary to ensure compliance with the federal Individuals with Disabilities Education Act (IDEA). Notwithstanding the forgoing, a local board may require information available on its student information management system or require the same information twice if the local board can demonstrate a compelling need and can demonstrate there is not a more expeditious manner of getting the information.

Any teacher who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of their duties, shall be guilty of a Class 1 misdemeanor and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

(h) To Take Care of School Buildings. — It shall be the duty of every teacher to instruct children in proper care of property and to exercise due care in the protection of school property, in accordance with the provisions of G.S. 115C-523. (1955, c. 1372, art. 17, ss. 4, 6; 1959, cc. 1016, 1294; 1969, c. 638, ss.

2, 3; 1971, c. 434; 1981, c. 423, s. 1; 1985, c. 642; c. 686, s. 2; 1989, c. 585, s. 4; 1993, c. 539, s. 884; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 8.29(k); 2000-67, s. 8.18(a).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 8.18(a), effective July 1, 2000, rewrote subsection (g).

Article 21A.

Privacy of Employee Personnel Records.

§ 115C-319. Personnel files not subject to inspection.

OPINIONS OF ATTORNEY GENERAL

The licensure status of an LEA employee is part of that employee's confidential personnel file, so an LEA is prohibited from routinely releasing it. See opinion of Attorney General to Lowell Harris, Director Exceptional Children Division N. C. Department of Public Instruction, 1998 N.C.A.G. 47 (11/20/98).

§ 115C-320. Certain records open to inspection.

OPINIONS OF ATTORNEY GENERAL

The licensure status of an LEA employee is part of that employee's confidential personnel file, so an LEA is prohibited from routinely releasing it. See opinion of Attorney General to Lowell Harris, Director Exceptional Children Division N. C. Department of Public Instruction, 1998 N.C.A.G. 47 (11/20/98).

Article 22.

General Regulations.

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. — As used in this section unless the context requires otherwise:

(1) Repealed by Session Laws 1997-221, s. 13(a).

(1a) "Career employee" as used in this section means:

a. An employee who has obtained career status with that local board as a teacher as provided in G.S. 115C-325(c);

b. An employee who has obtained career status with that local board in an administrative position as provided in G.S. 115C-325(d)(2);

c. A probationary teacher during the term of the contract as provided in G.S. 115C-325(m); and

d. A school administrator during the term of a school administrator contract as provided in G.S. 115C-287.1(c).

(1b) "Career school administrator" means a school administrator who has obtained career status in an administrative position as provided in G.S. 115C-325(d)(2).

(1c) "Career teacher" means a teacher who has obtained career status as provided in G.S. 115C-325(c).

(1d) "Case manager" means a person selected under G.S. 115C-325(h)(7).

(2) Repealed by Session Laws 1997, c. 221, s. 13(a).

(3) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(4) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher or as a school administrator. The word "demote" does not include: (i) a suspension without pay pursuant to G.S. 115C-325(f)(1); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.

(4a) "Disciplinary suspension" means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325(f)(2).

(5) "Probationary teacher" means a certificated person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.

(5a) **(Effective until June 30, 2003)** "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least 12 months, has not been employed in any capacity, other than as a substitute teacher, with a local board of education for at least 12 months, immediately preceding the effective date of reemployment, is determined by a local board of education to have had satisfactory performance during the last year of employment by a local board of education, and who is employed to teach as provided in G.S. 135-3(8)c. A retired teacher shall be treated the same as a probationary teacher except that a retired teacher is not eligible for career status.

(5b) "School administrator" means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program as provided in G.S. 115C-287.1(a)(3).

(6) "Teacher" means a person who holds at least a current, not provisional or expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervises teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.

(7) **(See note)** Redesignated as (a)(5a).

(8) "Year" for purposes of computing time as a probationary teacher shall be not less than 120 workdays performed as a probationary teacher in a full-time permanent position in a school year.

(b) Personnel Files. — The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days" notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from his personnel file that he deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher, except the data may be used to substantiate G.S. 115C-325(e)(1)g. or G.S. 115C-325(e)(1)o. as grounds for dismissal or demotion.

(c)(1) Election of a Teacher to Career Status. — Except as otherwise provided in subdivision (3) of this subsection, when a teacher has been employed by a North Carolina public school system for four consecutive years, the board, near the end of the fourth year, shall vote upon whether to grant the teacher career status. The board shall give the teacher written notice of that decision by June 15. If a majority of the board votes to grant career status to the teacher, and if it has notified the teacher of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate the teacher's employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current school term. If the board fails to vote on granting career status:

a. It shall not reemploy the teacher for a fifth consecutive year;
b. As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and
c. The teacher shall be entitled to an additional month's pay for every 30 days after June 16 that the board fails to vote upon the issue of granting career status.

(2) Employment of a Career Teacher. — A teacher who has obtained career status in any North Carolina public school system need not serve another probationary period of more than two years. The board may grant career status immediately upon employing the teacher, or after the first or second year of employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current term. If after two consecutive years of employment, the board fails to vote on the issue of granting career status:

a. It shall not reemploy the teacher for a third consecutive year;
b. As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and
c. The teacher shall be entitled to one additional month's pay for every 30 days beyond June 16 that the board fails to vote upon the issue of granting career status.

(2a) Notice of Teachers Eligible to Achieve Career Status. — At least 30 days prior to any board action granting career status, the superintendent shall submit to the board a list of the names of all teachers who are eligible to achieve career status. Notwithstanding any other provision of law, the list shall be a public record under Chapter 132 of the General Statutes.

(3) Ineligible for Career Status. — No employee of a local board of education except a teacher as defined by G.S. 115C-325(a)(6) is eligible to obtain career status or continue in a career status as a teacher if he no longer performs the responsibilities of a teacher as defined in G.S. 115C-325(a)(6). No person who is employed as a school administrator who did not acquire career status as a school administrator by June 30, 1997, shall have career status as an administrator. Further, no director or assistant principal is eligible to obtain career status as a school administrator unless he or she has already been conferred that status by the local board of education.

(4) Leave of Absence. — A career teacher who has been granted a leave of absence by a board shall maintain his career status if he returns to his teaching position at the end of the authorized leave.

(5) Consecutive Years of Service. — If a probationary teacher in a full-time permanent position does not work for at least 120 workdays in a school year because the teacher is on sick leave, disability leave, or both, that school year shall not be deemed to constitute (i) a consecutive year of service for the teacher or (ii) a break in the continuity in consecutive years of service for the teacher.

(d) Career Teachers and Career School Administrators.

(1) A career teacher or career school administrator shall not be subjected to the requirement of annual appointment nor shall he be dismissed, demoted, or employed on a part-time basis without his consent except as provided in subsection (e).

(2)a. The provisions of this subdivision do not apply to a person who is ineligible for career status as provided by G.S. 115C-325(c)(3).

b. Repealed by Session Laws 1997, c. 221, s. 13(a).

c. Subject to G.S. 115C-287.1, when a teacher has performed the duties of supervisor or principal for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment as a supervisor or principal. If a majority of the board votes to reemploy the teacher as a principal or supervisor, and it has notified him of that decision, it may not rescind that action but must proceed under the provisions of this section. If a majority of the board votes not to reemploy the teacher as a principal or supervisor, he shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal. A supervisor or principal who has not held that position for three years and whose contract will not be renewed for the next school year shall be notified by June 1 and shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal.

A year, for purposes of computing time as a probationary principal or supervisor, shall not be less than 145 workdays performed as a full-time, permanent principal or supervisor in a contract year.

A principal or supervisor who has obtained career status in that position in any North Carolina public school system may be required by the board of education in another school system to serve an additional three-year probationary period in that position before being eligible for career status. However, he may, at the option of the board of education, be granted career status immediately or after serving a probationary period of one or two additional years. A principal or supervisor with career status who resigns and within five years is reemployed by the same school system need not serve another probationary period in that position of more than two years and may, at the option of the board, be reemployed immediately as a career principal or supervisor or be given career status after only one year. In any event, if he is reemployed for a third consecutive year, he shall automatically become a career principal or supervisor.

(e) Grounds for Dismissal or Demotion of a Career Employee.

(1) Grounds. — No career employee shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:

a. Inadequate performance.
b. Immorality.
c. Insubordination.
d. Neglect of duty.
e. Physical or mental incapacity.
f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
g. Conviction of a felony or a crime involving moral turpitude.
h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
i. Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.
j. Failure to comply with such reasonable requirements as the board may prescribe.
k. Any cause which constitutes grounds for the revocation of the career teacher's teaching certificate or the career school administrator's administrator certificate.
l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2).
m. Failure to maintain his certificate in a current status.
n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.
o. Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(2) Reduction in Force. — Before recommending to a board the dismissal or demotion of the career employee pursuant to G.S. 115C-325(e)(1)l., the superintendent shall give written notice to the career employee by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified. The notice shall include a statement to the effect that if the career employee within 15 days after receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career employee may file with the superintendent a written request for a hearing before the board within 10 days. If the career employee requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j3) shall be

followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit a hearing by a case manager shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)l.

When a career employee is dismissed pursuant to G.S. 115C-325(e)(1)l. above, his name shall be placed on a list of available career employees to be maintained by the board. Career employees whose names are placed on such a list shall have a priority on all positions in which they acquired career status and for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed career employee a position for which he is certified and he refuses it, his name shall be removed from the priority list.

(3) Inadequate Performance. — In determining whether the professional performance of a career employee is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career employee of an inadequacy in his performance shall be conclusive evidence of satisfactory performance.

(4) Three-Year Limitation on Basis of Dismissal or Demotion. — Dismissal or demotion under subdivision (1) above, except paragraphs g. and o. thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal or demotion is mailed to the career employee. The three-year limitation shall not apply to dismissals or demotions pursuant to subdivision (1)b. above when the charge of immorality is based upon a career employee's sexual misconduct toward or sexual harassment of students or staff.

(f)(1) Suspension without Pay. — If a superintendent believes that cause exists for dismissing a career employee for any reason specified in G.S. 115C-325(e)(1) and that immediate suspension of the career employee is necessary, the superintendent may suspend the career employee without pay. Before suspending a career employee without pay, the superintendent shall meet with the career employee and give him written notice of the charges against him, an explanation of the bases for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the career employee shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the career employee's personnel file.

(2) Disciplinary Suspension Without Pay. — A career employee recommended for suspension without pay pursuant to G.S. 115C-325(a)(4a) may request a hearing before the board. If no request is made within 15 days, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent

and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.

a. Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. — The procedures for a board hearing under G.S. 115C-325(j3) shall apply if any of the following circumstances exist:
   1. The recommended disciplinary suspension without pay is for more than 10 days; or
   2. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher's or school administrator's certificate, or providing false information.

b. Board hearing for disciplinary suspensions of no more that 10 days. — The procedures for a board hearing under G.S. 115C-325(j2) shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in G.S. 115C-325(f)(2)a.2.

(f1) Suspension with Pay. — If a superintendent believes that cause may exist for dismissing or demoting a career employee for any reasons specified in G.S. 115C-325(e)(1), but that additional investigation of the facts is necessary and circumstances are such that the career employee should be removed immediately from his duties, the superintendent may suspend the career employee with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall notify the board of education within two days of his action and shall notify the career employee within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the career employee within the 90-day period, the career employee shall be reinstated to his duties immediately and all records of the suspension with pay shall be removed from the career employee's personnel file at his request. However, if the superintendent and the employee agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the career employee at any time during the period of the extension.

(f2) Procedure for Demotion of Career School Administrator. — If a superintendent intends to recommend the demotion of a career school administrator, the superintendent shall give written notice to the career school administrator by certified mail or personal delivery and shall include in the notice the grounds upon which the superintendent believes the demotion is justified. The notice shall include a statement that if the career school administrator requests a hearing within 15 days after receipt of the notice, the administrator shall be entitled to have the grounds for the proposed demotion reviewed by the local board of education. If the career school administrator does not request a board hearing within 15 days, the superintendent may file the recommendation of demotion with the board. If, after considering the superintendent's recommendation and the evidence presented at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board may by resolution order the demotion. The procedures for a board hearing under G.S. 115C-325(j3) shall apply to all demotions of career school administrators.

(g) Repealed by Session Laws 1997, c. 221, s. 13(a).

(h) Procedure for Dismissal or Demotion of Career Employee.

(1)a. A career employee may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

b. G.S. 115C-325(f2) shall apply to the demotion of a career school administrator.

(2) Before recommending to a board the dismissal or demotion of the career employee, the superintendent shall give written notice to the career employee by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified. The superintendent also shall meet with the career employee and give him written notice of the charges against him, an explanation of the basis for the charges, and an opportunity to respond if the career employee has not done so under G.S. 115C-325(f)(1). The notice shall include a statement to the effect that if the career employee within 14 days after the date of receipt of the notice requests a review, he shall be entitled to have the grounds for the proposed recommendations of the superintendent reviewed by a case manager. A copy of G.S. 115C-325 and a current list of case managers shall also be sent to the career employee. If the career employee does not request a hearing with a case manager within the 14 days provided, the superintendent may submit his recommendation to the board.

(3) Within the 14-day period after receipt of the notice, the career employee may file with the superintendent a written request for either (i) a hearing on the grounds for the superintendent's proposed recommendation by a case manager or (ii) a hearing within 10 days before the board on the superintendent's recommendation. If the career employee requests an immediate hearing before the board, he forfeits his right to a hearing by a case manager. If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation or (ii) accept or modify the superintendent's recommendation and dismiss, demote, reinstate, or suspend the employee without pay. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of the case manager is filed with the superintendent.

(4) Repealed by Session Laws 1997, c. 221, s. 13(a).

(5) If the career employee elects to request a hearing by a case manager, the career employee and superintendent shall each have the right to eliminate up to one-third of the names on the approved list of case managers. The career employee shall specify those case managers who are not acceptable in the career employee's request for a review of the superintendent's proposed recommendation under G.S. 115C-325(h)(3). The superintendent and career employee may jointly select a person to serve as case manager. The person need not be on the master list of case managers maintained by the Superintendent of Public Instruction.

(6) If a career employee requests a review by a case manager, the superintendent shall notify the Superintendent of Public Instruction within two days' receipt of the request. The notice shall contain a list of the case managers the career employee and the superintendent have eliminated from the master list or the name of a person, if any, jointly selected. Failure to exercise the right to eliminate names from the master list shall constitute a waiver of that right.

(7) The Superintendent of Public Instruction shall select a case manager within three days of receiving notice from the superintendent. The Superintendent of Public Instruction shall designate the person jointly selected by the parties to serve as case manager provided the person agrees to serve as case manager and can meet the requirements for time frames for the hearing and report as provided in G.S. 115C-325(i1)(1). If a case manager was not jointly selected or if the case manager is not available, the Superintendent of Public Instruction shall select a case manager from the master list. No person eliminated by the career employee or superintendent shall be designated case manager.

(8) The superintendent and career employee shall provide each other with copies of all documents submitted to the Superintendent of Public Instruction or to the designated case manager.

(h1) Case Managers; Qualifications; Training; Compensation.

(1) Each year the State Board of Education shall select and maintain a master list of no more than 42 qualified case managers.

(2) Persons selected by the State Board as case managers shall be: (i) certified as a North Carolina Superior Court mediator; (ii) a member of the American Arbitration Association's roster of arbitrators and mediators; or (iii) have comparable certification in alternative dispute resolution. Case managers must complete a special training course approved by the State Board of Education.

(3) The State Board of Education shall determine the compensation for a case manager. The State Board shall pay the case manager's compensation and reimbursement for expenses.

(i) Repealed by Session Laws 1997, c. 221, s. 13(a).

(i1) Report of Case Manager; Superintendent's Recommendation.

(1) The case manager shall complete the hearing held in accordance with G.S. 115C-325(j) and prepare the report within 10 days from the time of the designation. The case manager may extend the period of time by up to five additional days if the case manager informs the superintendent and the career employee that justice requires that a greater time be spent in connection with the investigation and the preparation of the report. Furthermore, the superintendent and the career employee may agree to an extension of more than five days.

(2) The case manager shall make all necessary findings of fact, based upon the preponderance of the evidence, on all issues related to each and every ground for dismissal and on all relevant matters related to the question of whether the superintendent's recommendation is justified. The case manager also shall make a recommendation as to whether the findings of fact substantiate the superintendent's grounds for dismissal. The case manager shall deliver copies of the report to the superintendent and the career employee.

(3) Within two days after receiving the case manager's report, the superintendent shall decide whether to submit a written recommendation to the local board for dismissal, demotion, or disciplinary suspension without pay to the board or to drop the charges against the career employee. The superintendent shall notify the career employee, in writing, of the decision.

(4) If the superintendent contends that the case manager's report fails to address a critical factual issue, the superintendent shall within three days receipt of the case manager's report, request in writing with a copy to the career employee that the case manager prepare a supplement to the report. The superintendent shall specify what critical factual issue the superintendent contends the case manager failed to

address. If the case manager determines that the report failed to address a critical factual issue, the case manager may prepare a supplement to the report to address the issue and deliver the supplement to both parties before the board hearing. The failure of the case manager to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(j) Hearing by a Case Manager. — The following provisions shall apply to a hearing conducted by the case manager.

(1) The hearing shall be private.
(2) The hearing shall be conducted in accordance with reasonable rules and regulations adopted by the State Board of Education to govern case manager hearings.
(3) At the hearing the career employee and the superintendent or the superintendent's designee shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115C-325 have been followed.
(4) Rules of evidence shall not apply to a hearing conducted by a case manager and the case manager may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.
(5) At least five days before the hearing, the superintendent shall provide to the career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence the superintendent intends to present. At least three days before the hearing, the career employee shall provide to the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence the career employee intends to present. Additional witnesses or documentary evidence may not be presented except upon a finding by the case manager that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subdivision.
(6) The case manager may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for dismissal.
(7) The case manager shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.
(8) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates a hearing before the board or to appeal the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings before the case manager.

(j1) Board Determination.

(1) Within two days after receiving the superintendent's notice of intent to recommend the career employee's dismissal to the board, the career employee shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the career employee can show that the request for a hearing was postmarked within the time provided, the career employee shall not forfeit the right to a board hearing. Within two days after receiving the career employee's request for a board hearing, the superintendent shall request that a transcript of the case manager hearing be made.

Within two days of receiving a copy of the transcript, the superintendent shall submit to the board the written recommendation and shall provide a copy of the recommendation to the career employee. The superintendent's recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the case manager's report and a copy of the transcript of the case manager hearing.

(2) If the career employee contends that the case manager's report fails to address a critical factual issue the career employee shall, at the same time he notifies the superintendent of a request for a board hearing pursuant to G.S. 115C-325(j1)(1), request in writing with a copy to the superintendent that the case manager prepare a supplement to the case manager's report. The career employee shall specify the critical factual issue he contends the case manager failed to address. If the case manager determines that the report failed to address a critical factual issue, the case manager may prepare a supplement to the report to address the issue and shall deliver the supplement to both parties before the board hearing. The failure of the case manager to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(3) Within two days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and shall notify the career employee by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than seven nor more than 10 days after the board has notified the career employee, unless both parties agree to an extension. If the career employee did not request a hearing, the board may, by resolution, reject the superintendent's decision, or accept or modify the decision and dismiss, demote, reinstate, or suspend the career employee without pay.

(4) If the career employee requests a board hearing, it shall be conducted in accordance with G.S. 115C-325(j2).

(5) The board shall make a determination and may (i) reject the superintendent's recommendation or (ii) accept or modify the recommendation and dismiss, demote, reinstate, or suspend the employee without pay.

(6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the career employee and the superintendent.

(j2) Board Hearing. — The following procedures shall apply to a hearing conducted by the board:

(1) The hearing shall be private.

(2) If the career employee requested a hearing by a case manager, the board shall receive the following:

a. The whole record from the hearing held by the case manager, including a transcript of the hearing, as well as any other records, exhibits, and documentary evidence submitted to the case manager at the hearing.

b. The case manager's findings of fact, including any supplemental findings prepared by the case manager under G.S. 115C-325 (i1)(4) or G.S. 115C-325(j1)(2).

c. The case manager's recommendation as to whether the grounds in G.S. 115C-325(e) submitted by the superintendent are substantiated.

d. The superintendent's recommendation and the grounds for the recommendation.

(3) If the career employee did not request a hearing by a case manager, the board shall receive the following:
a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the documentary evidence to the career employee seven days before the hearing.
b. Any documentary evidence the career employee intends to use to rebut the superintendent's recommendation. The career employee shall provide the superintendent with the documentary evidence three days before the hearing.
c. The superintendent's recommendation and the grounds for the recommendation.

(4) The superintendent and career employee may submit a written statement not less than three days before the hearing.

(5) The superintendent and career employee shall be permitted to make oral arguments to the board based on the record before the board.

(6) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence at the hearing before the case manager.

(7) The board shall accept the case manager's findings of fact unless a majority of the board determines that the findings of fact are not supported by substantial evidence when reviewing the record as a whole. In such an event, the board shall make alternative findings of fact. If a majority of the board determines that the case manager did not address a critical factual issue, the board may remand the findings of fact to the case manager to complete the report to the board. If the case manager does not submit the report within seven days receipt of the board's request, the board may determine its own findings of fact regarding the critical factual issues not addressed by the case manager. The board's determination shall be based upon a preponderance of the evidence.

(8) The board is not required to provide a transcript of the hearing to the career employee. If the board elects to make a transcript and if the career employee contemplates an appeal to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings. A career employee may have the hearing transcribed by a court reporter at the career employee's expense.

(j3) Board Hearing for Certain Disciplinary Suspensions, Demotions of Career School Administrators, and for Reductions in Force. — The following procedures shall apply for a board hearing under G.S. 115C-325(e)(2), G.S. 115C-325(f2), and G.S. 115C-325(f)(2)a.:

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.

(3) At the hearing, the career employee and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a disciplinary suspension without pay under G.S. 115C-325(f)(2)a., a demotion of a career school administrator under G.S. 115C-325(f2), or whether the grounds for a dismissal or demotion due to a reduction in force is justified.

(4) Rules of evidence shall not apply to a hearing under this subsection and the board may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least eight days before the hearing, the superintendent shall provide to the career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.

(6) At least six days before the hearing, the career employee shall provide the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the career employee intends to present.

(7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subsection.

(8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.

(9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(10) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates an appeal of the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings.

(k), (*l*) Repealed by Session Laws 1997, c. 221, s. 13(a).

(m) Probationary Teacher.

(1) The board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career employee may be dismissed as set forth in subsections (e), (f), (f1), and (h) to (j3) above.

(2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient: Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) Appeal. — Any career employee who has been dismissed or demoted under G.S. 115C-325(e)(2), or under G.S. 115C-325(j2), or who has been suspended without pay under G.S. 115C-325(a)(4a), or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1, or any probationary teacher whose contract is not renewed under G.S. 115C-325(m)(2) shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the career employee is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be determined under G.S. 115C-325(j2)(8) or G.S. 115C-325(j3)(10). A career employee who has been demoted or dismissed, or a school administrator whose contract is not renewed, who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action.

(o) Resignation; Nonrenewal of Contract. — A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days" notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact by June 15.

(p) Section Applicable to Certain Institutions. — Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students.

(p1) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Residential Schools. —

(1) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of teachers, principals, assistant principals, directors, supervisors, and other certificated personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Part 3A of Article 3 of Chapter 143B of the General Statutes. The Secretary shall dismiss a teacher, principal, assistant principal, director, supervisor, or other certificated personnel when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The Secretary may dismiss a teacher, principal, assistant principal, director, supervisor, or other certificated personnel when:

a. The Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under Part 3A of Article 3 of Chapter 143B of the General Statutes; and

b. That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other certificated personnel for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

Within 30 days of any dismissal under this subdivision, a teacher, principal, assistant principal, director, supervisor, or other certificated personnel may request a hearing before a panel of three members designated by the Secretary. The Secretary shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of certificated staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the certified staff member.

Within 30 days of any dismissal under this subdivision, a certificated staff member may request a hearing before a panel of three members designated by the Secretary of Health and Human Services. The Secretary shall adopt procedures to ensure that due process rights are afforded to certificated staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

(3) The Secretary of Health and Human Services or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under Part 3A of Article 3 of Chapter 143B of the General Statutes.

(4) Neither party to a school administrator contract is entitled to damages under this subsection.

(5) The Secretary of Health and Human Services shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection.

(q) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Schools.

(1) Notwithstanding any other provision of this section or any other law, this subdivision governs the State Board's dismissal of principals assigned to low-performing schools to which the Board has assigned an assistance team:

a. The State Board through its designee may, at any time, recommend the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The State Board through its designee shall recommend the dismissal of any principal when the Board receives from the assistance team assigned to that principal's school two consecutive evaluations that include written findings and recommendations regarding the principal's inadequate performance.

b. If the State Board through its designee recommends the dismissal of a principal under this subdivision, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.

c. The panel shall order the dismissal of the principal if it determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance.

d. The panel may order the dismissal of the principal if (i) it determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the principal for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

e. If the State Board or its designee recommends the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal, the panel may order the dismissal of the principal if the panel determines from other available information that the low performance of the school is due to the principal's inadequate performance.

f. In all hearings under this subdivision, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance. In all hearings under sub-subdivision d. of this subdivision, the burden of proof is on the State Board to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school and to establish one or more of the grounds established for dismissal or demotion of a career employee under G.S. 115C-325(e)(1).

g. In all hearings under this subdivision, two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal.

h. The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

a. The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and

b. That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career teacher.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2a) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of certified staff members who have engaged in a remediation plan under G.S. 115C-105.38A(a) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the certified staff member.

A certified staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to certified staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(3) The State Board of Education or a local board may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent a local board from refusing to

renew the contract of any person employed in a school identified as low-performing under G.S. 115C-105.37.

(4) Neither party to a school administrator contract is entitled to damages under this subsection.

(5) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection. (1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1979, c. 864, s. 2; 1981, c. 423, s. 1; c. 538, ss. 1-3; c. 731, s. 1; c. 1127, ss. 39, 40; 1981 (Reg. Sess., 1982), c. 1282, s. 30; 1983, c. 770, ss. 1-15; 1983 (Reg. Sess., 1984), c. 1034, s. 34; 1985, c. 791, s. 5(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 60(a); 1987, c. 395, s. 2; c. 540, c. 571, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 109; 1991 (Reg. Sess., 1992), c. 942, s. 1; c. 1038, s. 14; 1993, c. 169, s. 1; c. 210, ss. 1-3; 1993 (Reg. Sess., 1994), c. 677, ss. 10, 16(a); 1995, c. 369, s. 2; 1995 (Reg. Sess., 1996), c. 716, s. 8; 1997-221, ss. 11(a), 13(a); 1997-443, s. 11A.118(a); 1998-5, s. 2; 1998-59, s. 3; 1998-131, s. 6; 1998-202, s. 4(o); 1998-212, s. 28.24(c); 1998-217, s. 67.1(a); 1999-96, ss. 1-5; 1999-456, s. 34; 2000-67, s. 8.24(b); 2000-137, s. 4(r); 2000-140, ss. 23, 24.)

Editor's Note. — Subdivision (a)(5b) was originally assigned the designation of subdivision (a)(5a) by the Revisor of Statutes, the number in Session Laws 1997-221, s. 13(a), having been subdivision (a)(7). Session Laws 1998-212, § 28.24(c), added the present subdivision (a)(5a), and redesignated former subdivision (a)(5a) as subdivision (a)(5b).

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 8.24(b), effective July 1, 2000, substituted "at least 12 months immediately preceding the effective date of reemployment" for "at least 12 months" in subdivision (a)(5a).

Session Laws 2000-137, s.4(r), effective July 20, 2000, substituted "Departments of Health and Human Services, Correction, or Juvenile Justice and Delinquency Prevention" for "Departments of Health and Human Services and Correction or the Office of Juvenile Justice" in subsection (p).

Session Laws 2000-140, ss. 23, 24, effective July 21, 2000, deleted "or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1" following "in accordance with G.S. 115C-287.1" in subsection (n), and deleted a second paragraph in subdivision (q)(1)b which repeated language found in the first paragraph and had been inadvertently retained when the section was amended by Session Laws 1998-59, s. 3.

CASE NOTES

I. IN GENERAL.

Applied in Madey v. Duke Univ., 1999 U.S. Dist. LEXIS 21379, — F. Supp. 2d — (M.D.N.C. December 1, 1999).

OPINIONS OF ATTORNEY GENERAL

Career Status of School Psychologists And Speech Pathologists. — Neither Section 110 of the 1990 Current Appropriations Act, 1989 N.C. Sess. Laws ch. 1066 nor Section 28.14(d) of the 1996 Current Appropriations Act, 1996 N.C. Sess Laws ch. 18 (1996 Second Extra Session) had the effect, or were intended by the General Assembly to have the effect, of making either school psychologists or speech pathologists ineligible for career status. See opinion of Attorney General to Mr. Jim Deni, Vice-Chair Watauga County Board of Education, 1997 N.C.A.G. 53 (8/21/97).

Evidentiary Scope of A School Board Hearing. — If a career employee chooses to bypass the case manager hearing, the record before the board in a hearing pursuant to subdivision (j2)(3) of this section must include the superintendent's recommendation and grounds for the recommendation as defined in subdivision (h)(2) of this section, documentary evidence submitted by the superintendent and the employee, the parties' briefs on the law and evidence in the record, and oral arguments. The career employee waives his right to present nondocumentary evidence unless the board exercises its discretion under G.S. § 115C-45 to subpoena additional evidence or testimony that might aid in its decision. See opinion of Attorney General to Mr. L. P. Hornthal, Jr. Hornthal, Riley, Ellis & Maland, LLP, 1997 N.C.A.G. 69 (12/5/97).

SUBCHAPTER VI. STUDENTS.

Article 26.

Attendance.

Part 1. Compulsory Attendance.

§ 115C-378. Children required to attend.

OPINIONS OF ATTORNEY GENERAL

Notice of Intent Not Required. — The North Carolina Division of Non-Public Education is not required to accept a notice of intent to operate a home school, and the school is not required to file such notice, where the home school does not enroll any children of compulsory school attendance age. See opinion of Attorney General to The Honorable J. Russell Capps N.C. House of Representatives, 1997 N.C.A.G. 54 (8/25/97).

Article 29.

Protective Provisions and Maintenance of Student Records.

§ 115C-400. School personnel to report child abuse.

OPINIONS OF ATTORNEY GENERAL

Person Reporting Must Be Person Suspecting Child Abuse. — This section requires the person who has cause to suspect child abuse to be the person to report to Director of Social Services of the county. However, the statute does not prohibit that person from making an additional report of the suspected abuse to a designated person in the school system. See opinion of Attorney General to Mr. Ernest H. Morton, Jr. Morton, Grigg & Phillips, LLP, 1997 N.C.A.G. 62 (10/14/97).

Section 7A-543 (see now § 7B-301) and this section did not prohibit 19 schools in the same county school system from having the same contact person to receive and report cases of suspected child abuse. See opinion of Attorney General to Mr. Ernest H. Morton, Jr. Morton, Grigg & Phillips, LLP, 1997 N.C.A.G. 62 (10/14/97).

§ 115C-404. Use of juvenile court information.

(a) Written notifications received in accordance with G.S. 7B-3101 and information gained from examination of juvenile records in accordance with G.S. 7B-3100 are confidential records, are not public records as defined under G.S. 132-1, and shall not be made part of the student's official record under

G.S. 115C-402. Immediately upon receipt, the principal shall maintain these documents in a safe, locked record storage that is separate from the student's other school records. The principal shall shred, burn, or otherwise destroy documents received in accordance with G.S. 7B-3100 to protect the confidentiality of the information when the principal receives notification that the court dismissed the petition under G.S. 7B-2411, the court transferred jurisdiction over the student to superior court under G.S. 7B-2200, or the court granted the student's petition for expunction of the records. The principal shall shred, burn, or otherwise destroy all information gained from examination of juvenile records in accordance with G.S. 7B-3100 when the principal finds that the school no longer needs the information to protect the safety of or to improve the educational opportunities for the student or others. In no case shall the principal make a copy of these documents.

(b) Documents received under this section shall be used only to protect the safety of or to improve the education opportunities for the student or others. Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a decision to suspend or expel a student. Upon receipt of each document, the principal shall share the document with those individuals who have (i) direct guidance, teaching, or supervisory responsibility for the student, and (ii) a specific need to know in order to protect the safety of the student or others. Those individuals shall indicate in writing that they have read the document and that they agree to maintain its confidentiality. Failure to maintain the confidentiality of these documents as required by this section is grounds for the dismissal of an employee who is not a career employee and is grounds for dismissal of an employee who is a career employee, in accordance with G.S. 115C-325(e)(1)i.

(c) If the student graduates, withdraws from school, is suspended for the remainder of the school year, is expelled, or transfers to another school, the principal shall return all documents not destroyed in accordance with subsection (a) of this section to the juvenile court counselor and, if applicable, shall provide the counselor with the name and address of the school to which the student is transferring. (1997-443, s. 8.29(f); 1998-202, ss. 8, 13(cc); 1998-217, s. 12; 2000-140, s. 25.)

Effect of Amendments. — Session Laws 2000-140, s. 25, effective July 21, 2000, deleted residual language at the end of subsection (a) that had been inadvertently retained when the section was amended by Session Laws 1998-202, ss. 8 and 13 (cc) and by Session Laws 1998-17, s. 12, each of which amendments had failed to incorporate the other.

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 31.

The School Budget and Fiscal Control Act.

Part 2. Budget.

§ 115C-426. Uniform budget format.

CASE NOTES

Immunity of Local Board From Suit for Monetary Relief. — Using an analysis of the organizational and financial structure of the local school boards under both case and statutory law, the court determined that defendant board was an arm of the state for purposes of a suit seeking FLSA damages, and as such, it was entitled to sovereign immunity from a suit for monetary relief. Cash v. Granville County Bd. of Educ., — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 4852 (E.D.N.C. March 8, 2000).

Part 3. Fiscal Control.

§ 115C-435. School finance officer.

OPINIONS OF ATTORNEY GENERAL

Dismissal Authority. — A superintendent of schools has the authority to dismiss a school finance officer without the approval of the board of education. See opinion of Attorney General to Grady L. Hunt Locklear, Jacobs & Hunt, 1998 N.C.A.G. 45 (10/29/98).

Article 31A.

Civil Penalty and Forfeiture Fund.

§ 115C-457.1. Creation of Fund; administration.

(a) There is created the Civil Penalty and Forfeiture Fund. The Fund shall consist of the clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and are payable to the County School Fund pursuant to Article IX, Section 7 of the Constitution.

(b) The Fund shall be administered by the Office of State Budget, Planning, and Management. The Fund and all interest accruing to the Fund shall be faithfully used exclusively for maintaining free public schools. (1997-443, s. 8.20; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (b).

OPINIONS OF ATTORNEY GENERAL

Disposition of Proceeds of Environmental Civil Penalties. — The clear proceeds of environmental civil penalties controlled by Article IX, Section 7 which were collected from offending local school administrative units before September 1, 1997, may not be returned to the offending local units but rather should be deposited into the General Fund. The clear proceeds of environmental civil penalties controlled by Article IX, Section 7 which are collected from offending local school administrative units on or after September 1, 1997, may not be returned to the offending local units. However, in compliance with this section, these funds should be remitted to the Civil Penalty and Forfeiture Fund, transferred to the State School Technology Fund and allocated to all eligible local school administrative units, except the offending unit, on the basis of average daily membership. See opinion of Attorney General to Richard Whisnant, General Counsel Department of Environment, Health & Natural Resources, 1997 N.C.A.G. 65 (11/4/97).

§ 115C-457.2. Remittance of moneys to the Fund.

The clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and are payable to the County School Fund pursuant to Article IX, Section 7 of the Constitution shall be remitted to the Office of State Budget, Planning, and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all funds which are civil penalties or civil forfeitures within the meaning of Article IX, Section 7 of the Constitution shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of such funds include the full amount of all such penalties and forfeitures collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected. (1997-443, s. 8.20; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

§ 115C-457.3. Transfer of funds to the State School Technology Fund.

The Office of State Budget, Planning, and Management shall transfer funds accruing to the Civil Penalty and Forfeiture Fund to the State School Technology Fund. These funds shall be allocated to local school administrative units on the basis of average daily membership. (1997-443, s. 8.20; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

Article 32B.

Computer Loan Revolving Fund.

§§ 115C-472.6 through 115C-472.9: Reserved for future codification purposes.

Article 32C.

Fund for the Reduction of Class Size in Public Schools.

§ 115C-472.10. Establishment of the Fund for the Reduction of Class Size in Public Schools.

(a) There is established under the control and direction of the State Board of Education the Fund for the Reduction of Class Size in Public Schools. This fund shall be a nonreverting special revenue fund consisting of moneys credited to it under G.S. 20-81.12(b12) from the sale of special registration plates to support the public schools.

(b) The State Board of Education shall allocate funds in the Fund for the Reduction of Class Size in Public Schools to local school administrative units to reduce class size in public schools. (2000-159, s. 8.)

Editor's Note. — Session Laws 2000-159, s. 11, made this Article effective August 2, 2000.

Article 34B.

Qualified Zone Academy Bonds.

§ 115C-489.5. Qualified zone academy bonds; findings.

The General Assembly finds:

(1) Section 226 of the Taxpayer Relief Act of 1997, as codified at 26 U.S.C. § 1397E, provides funds for school improvements through taxable qualified zone academy bonds. Ninety-five percent (95%) or more of the proceeds of a qualified zone academy bond issue must be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency.

(2) Partnerships between private entities and local schools are promoted through the use of qualified zone academy bonds. Issuers must certify that they have received written commitments from one or more private entities to make qualified contributions valued at ten percent (10%) of the proceeds of the issue.

(3) Eligible taxpayers may receive federal tax credits for holding the qualified zone academy bonds. It is intended that the qualified zone academy bonds be sold at par value so that the tax credits received are instead of interest that otherwise would have been paid on the bonds. Therefore, issuers of qualified zone academy bonds are obligated to repay the principal amount of the qualified zone academy bonds but need not make interest payments.

(4) Applicable federal law limits the amount of qualified zone academy bonds that may be issued in North Carolina in a calendar year. (2000-69, s. 1.)

Editor's Note. — Session Laws 2000-69, s. 6, made this Article effective June 30, 2000.

Subdivisions (1) through (4) were enacted as (a) through (d) and have been redesignated at the direction of the Revisor of Statutes.

Session Laws 2000-69, s. 4, in part, provides: "Interpretation of Act.

"(a) Additional Method. This act provides an additional and alternative method for the doing of the things it authorizes and is as supplemental and additional to powers conferred by other laws. Except as otherwise expressly provided, it does not derogate any powers now existing.

"(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly.

"(c) Liberal Construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-69, s. 4(d) contains a severability clause.

§ 115C-489.6. Administration; consultation; issuance of bonds.

(a) State Board of Education to Administer Program. — The State Board of Education is designated the State education agency responsible for administering the qualified zone academy bond program in North Carolina for the purposes of 26 U.S.C. § 1397E. The State Board of Education shall perform all activities required to implement and carry out the qualified zone activity bond program in North Carolina. Those activities include:

(1) Defining those areas and schools that are eligible under federal law to participate in the qualified zone academy bond program in North Carolina.

(2) Designing an application process under which proposals may be solicited from qualified zone academies.

(3) Determining the eligibility of an applicant to be a participating qualified zone academy.

(4) Awarding the State's allocation of total funds among selected applicants and establishing conditions upon the usage of the allocation. These conditions must include:

a. Requiring that the bond proceeds be used only for rehabilitating or repairing the public school facility in which the qualified zone academy is located, which may include (i) wiring and other infrastructure improvements related to providing technology and (ii) equipment related to the rehabilitation or repair, but not personal computers or similar technology equipment.

b. Conditions designed to assure that the allocation is used in a timely manner.

(5) Confirming that the terms of any qualified zone academy bonds issued in accordance with this program are consistent with the terms of the federal program.

(b) Assistance. — The Department of Public Instruction shall provide the State Board of Education any support it requires in carrying out this section.

(c) Consultation. — In reviewing applications and awarding allocations, the State Board of Education shall consult with the Local Government Commission to determine whether a prospective issuer of qualified zone academy bonds is able to issue or incur marketable obligations.

(d) Issuance of Bonds. — Any bonds designated as qualified zone academy bonds may be issued pursuant to the applicable provisions of and in compliance with the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes, or pursuant to the applicable provisions of and in compliance with G.S. 160A-20, to the extent authorized by G.S. 153A-158.1. As provided in G.S. 159-123(b), bonds designated as qualified zone academy bonds to be issued pursuant to the Local Government Bond Act may be sold by the Local Government Commission at private sale. (2000-69, s. 1.)

SUBCHAPTER IX. PROPERTY.

Article 37.

School Sites and Property.

§ 115C-518. Disposition of school property; easements and rights-of-way.

Local Modification. —Asheville-Buncombe Technical Community College: 2000-99, s. 1. For additional local modifications to this section, see the main volume.

Article 38A.

Public School Building Capital Fund.

§ 115C-546.1. Creation of Fund; administration.

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs and their equipment needs under their local school technology plans.

(b) **(See notes)** Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an

§ 115C-546.1(b) is set out twice. See notes.

amount equal to two thirty-firsts (2/31) of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars ($2,500,000). All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(b) **(See notes)** Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to the applicable fraction provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars ($2,500,000). All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

Period	*Fraction*
10/1/97 to 9/30/98	One-fifteenth (1/15)
10/1/98 to 9/30/99	Two twenty-ninths (2/29)
10/1/99 to 9/30/00	One-fourteenth (1/14)
After 9/30/00	Five sixty-ninths (5/69)

(c) The Fund shall be administered by the Office of State Budget, Planning, and Management. (1987, c. 622, s. 12; c. 813, s. 20; 1989 (Reg. Sess., 1990), c. 1066, s. 28(b); 1991, c. 689, s. 260; 1995 (Reg. Sess., 1996), c. 631, s. 15; 1996, 2nd Ex. Sess. c. 13, s. 2.2; 1997-221, s. 26; 2000-140, s. 93.1(a).)

Editor's Note. — For the contingent effective date of subsection (b), see the main volume.

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (c).

SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

Article 39.

Nonpublic Schools.

Part 3. Home Schools.

§ 115C-564. Qualifications and requirements.

CASE NOTES

Court Considered Home Schooling in Addressing Child's Best Interests for Custody Purposes. — The trial court did not err by looking at the child's home schooling situation in addressing his best interests and consequently changing custody in favor of his father where the boy's Tourette's syndrome, and the resulting motor and verbal tics, required specialized attention that was not being addressed by defendant/mother's home schooling, but was being addressed by the public schools where the father lived. Metz v. Metz, — N.C. App. —, 530 S.E.2d 79, 2000 N.C. App. LEXIS 621 (2000).

OPINIONS OF ATTORNEY GENERAL

Notice of Intent Not Required. — The North Carolina Division of Non-Public Education is not required to accept a notice of intent to operate a home school, and the school is not required to file such notice, where the home school does not enroll any children of compulsory school attendance age. See opinion of Attorney General to The Honorable J. Russell Capps N.C. House of Representatives, 1997 N.C.A.G. 54 (8/25/97).

Chapter 115D.

Community Colleges.

Article 1.

General Provisions for State Administration.

§ 115D-1. Statement of purpose.

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the training school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission. (1963, c. 448, s. 23; 1969, c. 562, s. 1; 1979, c. 462, s. 2; 1985, c. 479, s. 68; 1997-443, s. 11A.118(a); 1998-202, s. 4(p); 2000-137, s. 4(s).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(s), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice."

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

(a) The State Board of Community Colleges may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the State Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Community Colleges shall establish standards and scales for salaries and allotments paid from funds administered by the State Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The State Board shall have authority with respect to individual institutions: to approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees within policies for tuition and fees established by the General Assembly; and to establish and regulate financial accounting procedures.

The State Board of Community Colleges shall require all community colleges to meet the faculty credential requirements of the Southern Association of Colleges and Schools for all community college programs.

(a1) Notwithstanding G.S. 66-58(c)(3) or any other provisions of law, the State Board of Community Colleges may adopt rules governing the expenditure of funds derived from bookstore sales by community colleges. These expenditures shall be consistent with the mission and purpose of the Community College System. Profits may be used in the support and enhancement of the bookstores, for student aid or scholarships, for expenditures of direct benefit to students, and for other similar expenditures authorized by the board of trustees, subject to rules adopted by the State Board. These funds shall not be used to supplement salaries of any personnel.

(a2) The State Board of Community Colleges shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State.

(a3) The State Board of Community Colleges shall adopt the following rules to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

(1) To establish the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate.

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:

a. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

b. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

(3) To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent.

(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section.

(c) No course of instruction shall be offered by any community college at State expense or partial State expense to any captive or co-opted group of students, as defined by the State Board of Community Colleges, without prior approval of the State Board of Community Colleges. Approval by the State Board of Community Colleges shall be presumed to constitute approval of both the course and the group served by that institution. The State Board of Community Colleges may delegate to the President the power to make an initial approval, with final approval to be made by the State Board of Community Colleges. A course taught without such approval will not yield any full-time equivalent students, as defined by the State Board of Community Colleges.

(c1) Community colleges shall report full-time equivalent (FTE) student hours for correction education programs on the basis of contact hours rather than student membership hours. No community college shall operate a multi-entry/multi-exit class or program in a prison facility, except for a literacy class or program.

The State Board shall work with the Department of Correction on offering classes and programs that match the average length of stay of an inmate in a prison facility.

(d) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(e) Repealed by Session Laws 1999-84, s. 3, effective May 21, 1999.

(f) A community college may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the Joint Legislative Commission on Governmental Operations, and the Advisory Budget Commission on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved.

(g) Funds appropriated to the Community Colleges System Office as operating expenses for allocation to the institutions comprising the North Carolina Community College System shall not be used to support recreation extension courses. The financing of these courses by any institution shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students (FTE) for use in budget-funding formulas at the State level.

(h) Whenever a community college offers real estate continuing education courses pursuant to G.S. 93A-4A, the courses shall be offered on a self-supporting basis.

(i) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on March 1 and October 1 of each year on expenditures for the New and Expanding Industry Program each fiscal year. The report shall include, for each company or individual that receives funds for New and Expanding Industry:

(1) The total amount of funds received by the company or individual;
(2) The amount of funds per trainee received by the company or individual;
(3) The amount of funds received per trainee by the community college training the trainee;
(4) The number of trainees trained by company and by community college; and
(5) The number of years the companies or individuals have been funded.

(j) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year.

(k) The North Carolina Community College System's New and Expanding Industry Training (NEIT) Program Guidelines, which were adopted by the State Board of Community Colleges on April 18, 1997, apply to all funds appropriated for the Program after June 30, 1997. A project approved as an exception under these Guidelines, or these Guidelines as modified by the State Board of Community Colleges, shall be approved for one year only.

(*l*) The State Board shall review and approve lease purchase and installment purchase contracts as provided under G.S. 115D-58.15(b). The State Board shall adopt policies and procedures governing the review and approval process. (1963, c. 488, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882; 1977, c. 1065; 1979, c. 462, s. 2; c. 896, ss. 5-7; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 609; c. 859, s. 35.1; c. 897; c. 1127, s. 43; 1983, c. 717, s. 28; 1983 (Reg. Sess., 1984), c. 1034, ss. 45, 46; 1985, c. 479, s. 67; 1985 (Reg. Sess., 1986), c. 955, s. 22; 1987, c. 282, s. 34; c. 564, ss. 8-10, 12, 33; c. 763, s. 1; 1989, c. 162; 1989 (Reg. Sess., 1990), c. 915, s. 1; c. 1066, s. 91; 1991, c. 689, ss. 44, 48; 1991 (Reg. Sess., 1992), c. 880, s. 4; 1993, c. 170, s. 2; c. 321, ss. 111, 117(e); c. 492, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 18.4; 1995, c. 288, s. 2; c. 324, s. 16.4; 1996, 2nd Ex. Sess., c. 18, ss. 17.4, 17.7(a); 1997-443, ss. 9.5, 9.6(a), 11A.118(a); 1997-507, s. 4; 1998-111, s. 3; 1998-202, s. 4(q); 1999-84, ss. 3, 9; 1999-243, s. 9; 2000-137, s. 4(t).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(t), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" twice in subsection (b).

Article 2.

Local Administration.

§ 115D-15. Sale, exchange or lease of property; use of proceeds from donated property.

Local Modification. — Asheville-Buncombe Technical Community College: 2000-99, ss. 1, 2. For additional local modifications to this section, see the main volume.

Article 3.

Financial Support.

§ 115D-31. State financial support of institutions.

(a) The State Board of Community Colleges shall be responsible for providing, from sources available to the State Board, funds to meet the financial needs of institutions, as determined by policies and regulations of the State Board, for the following budget items:

(1) Plant Fund. — Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodeling of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State. Notwithstanding the provisions of this subdivision, G.S. 116-53(b), or G.S. 143-31.4, appropriations by the State of North Carolina for capital or permanent improvements for community colleges may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes.

(2) Current Operating Expenses:

a. General administration. — Salaries and other costs as determined by the State Board necessary to carry out the functions of general administration.

b. Instructional services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of instructional services.

c. Support services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of support services.

(3) Additional Support for Regional Institutions as Defined in G.S. 115D-2(4). — Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32(a)(2)a. Amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the administrative area in which the regional institution is located shall be called the "local factor," the combined populations of all other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115D-32(a)(2)a has been approved under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a

percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest United States census.

(b) The State Board is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions.

(c) State funds appropriated to the State Board of Community Colleges for equipment and library books, except for funds appropriated to the Equipment Reserve Fund, shall revert to the General Fund 12 months after the close of the fiscal year for which they were appropriated. Encumbered balances outstanding at the end of each period shall be handled in accordance with existing State budget policies. The System Office shall identify to the Office of State Budget, Planning, and Management the funds that revert at the end of the 12 months after the close of the fiscal year.

(d) State funds appropriated to the State Board of Community Colleges for the Equipment Reserve Fund shall be allocated to institutions in accordance with the equipment allocation formula for the fiscal period. An institution to which these funds are allocated shall spend the funds only in accordance with an equipment acquisition plan developed by the institution and approved by the State Board.

These funds shall not revert and shall remain available until expended in accordance with an approved plan.

(e) If receipts for community college tuition and fees exceed the amount certified in General Fund Codes at the end of a fiscal year, the State Board of Community Colleges shall transfer the amount of receipts and fees above those budgeted to the Equipment Reserve Fund. (1963, c. 448, s. 23; 1973, c. 590, ss. 2, 3; c. 637, s. 1; 1979, c. 462, s. 2; c. 896, s. 13; c. 946, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 2; 1985, c. 757, s. 146; 1987, c. 564, ss. 9, 12; 1995, c. 324, s. 16; 1998-212, s. 10.2(a); 1999-84, s. 11; 1999-237, s. 9.3(a); 2000-140, s. 93.1(a).)

Cross References. — As to match requirements applicable to bond proceeds for new construction, exceptions, and provisions for allocation where a community college has failed to meet matching requirements by July 1, 2006, see the editor's note at § 116D-41.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 9.4, effective June 30, 2000, provides that, notwithstanding the provisions of G.S. 115D-31(e), $2,000,000 in overrealized receipts for the 1999-2000 fiscal year are to be used for operations of the Community Colleges System Office for the 2000-2001 fiscal year to offset a base budget reduction of an equal amount.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (c).

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Matching Funds Required for Capital Improvement Disbursement. — Subdivision (a)(1) of this section obligates the State Board of Community Colleges to require local community colleges to provide matching funds before it disburses capital improvement money from the 1998 Appropriations Bill. See opinion of Attorney General to H. Martin Lancaster President NC Community College System, 1998 N.C.A.G. 56 (12/18/98).

§ 115D-31.3. Performance budgeting.

(a) Creation of Accountability Measures and Performance Standards. — The State Board of Community Colleges shall create new accountability measures and performance standards to be used for performance budgeting for the Community College System. The results of a survey may Survey results shall be used as a performance standard only if the survey is statistically valid. The State Board of Community Colleges shall review annually the accountability measures and performance standards to ensure that they are appropriate for use in performance budgeting.

(b) through (d). Repealed by Session Laws 2000-67, s. 9.7, effective July 1, 2000.

(e) Mandatory Performance Measures. — The State Board of Community Colleges shall evaluate each college on the following 12 performance standards:

(1) Progress of basic skills students,
(2) Passing rate for licensure and certification examinations,
(3) Goal completion of program completers and noncompleters,
(4) Employment status of graduates,
(5) Performance of students who transfer to the university system,
(6) Passing rates in developmental courses,
(7) Success rates of developmental students in subsequent college-level courses,
(8) The level of satisfaction of students who complete programs and those who do not complete programs,
(9) Curriculum student retention and graduation,
(10) Employer satisfaction with graduates,
(11) Client satisfaction with customized training, and
(12) Program enrollment.

(f) Publication of Performance Ratings. — Each college shall publish its performance on the 12 measures set out in subsection (e) of this section (i) annually in its electronic catalog or on the Internet and (ii) in its printed catalog each time the catalog is reprinted.

The Community Colleges System Office shall publish the performance of all colleges on all 12 measures in its annual Critical Success Factors Report.

(g) Performance Budgeting; Recognition for SuccessfulPerformance. — For the purpose of performance budgeting, the State Board of Community Colleges shall evaluate each college on six performance measures. These six shall be the five set out in subdivisions (1) through (5) of subsection (e) of this section and one selected by the college from the remainder set out in subdivisions (6) through (11). For each of these six performance measures on which a college performs successfully or attains the standard of significant improvement, the college may retain and carry forward into the next fiscal year one-third of one percent (⅓ of 1%) of its final fiscal year General Fund appropriations.

(h) Performance Budgeting; Recognition for SuperiorPerformance. — Funds not allocated to colleges in accordance with subsection (g) of this section shall be used to reward superior performance. After all State aid budget obligations have been met, the State Board of Community Colleges shall distribute the remainder of these funds equally to colleges that perform successfully on at least five of the six performance measures.

(i) Permissible Uses of Funds. — Funds retained by colleges or distributed to colleges pursuant to this section shall be used for the purchase of equipment, initial program start-up costs including faculty salaries for the first year of a program, and one-time faculty and staff bonuses. These funds shall not be used for continuing salary increases or for other obligations beyond the fiscal year into which they were carried forward. These funds shall be encumbered within 12 months of the fiscal year into which they were carried forward. (1999-237, s. 9.2(a); 2000-67, s. 9.7.)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 9.7, effective July 1, 2000, rewrote the section.

§ 115D-39. Student tuition and fees.

The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and G.S. 116-143.3, shall apply to students attending institutions operating pursuant to this Chapter; provided, however, that when an employer other than the armed services, as that term is defined in G.S. 116-143.3, pays tuition for an employee to attend an institution operating pursuant to this Chapter and when the employee works at a North Carolina business location, the employer shall be charged the in-State tuition rate; provided further, however, a community college may charge in-State tuition to up to one percent (1%) of its out-of-state students, rounded up to the next whole number, to accommodate the families transferred by business, the families transferred by industry, or the civilian families transferred by the military, consistent with the provisions of G.S. 116-143.3, into the State. Notwithstanding these requirements, a refugee who lawfully entered the United States and who is living in this State shall be deemed to qualify as a domiciliary of this State under G.S. 116-143.1(a)(1) and as a State resident for community college tuition purposes as defined in G.S. 116-143.1(a)(2). Also, a nonresident of the United States who has resided in North Carolina for a 12-month qualifying period and has filed an immigrant petition with the United States Immigration and Naturalization Service shall be considered a State resident for community college tuition purposes. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 58; 1989, c. 752, s. 85; 1991 (Reg. Sess., 1992), c. 1044, s. 25(a); 1993, c. 561, s. 50(a); 1996, 2nd Ex. Sess., c. 18, s. 17.1(a); 2000-67, s. 9.8.)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 9.8, effective July 1, 2000, added the last sentence in the last paragraph.

Article 4A.

Budgeting, Accounting, and Fiscal Management.

§ 115D-58.5. Accounting system.

(a) Each institution shall establish and maintain an accounting system consistent with procedures as prescribed by the Community Colleges System Office and the State Controller, which shows its assets, liabilities, equities, revenues, and expenditures.

(b) Each institution shall be governed in its purchasing of all supplies, equipment, and materials by contracts made by or with the approval of the Purchase and Contract Division of the Department of Administration except as provided in G.S. 115D-58.14. No contract shall be made by any board of trustees for purchases unless provision has been made in the budget of the institution to provide payment thereof. In order to protect the State purchase contracts, it is the duty of the board of trustees and administrative officers of each institution to pay for such purchases promptly in accordance with the contract of purchase. Equipment shall be titled to the State Board of Community Colleges if derived from State or federal funds.

(c) The operations of each institution shall be subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(d) Repealed by Session Laws 1983, c. 913, s. 18. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1; 1983, c. 913, s. 18; 1998-68, s. 1; 1999-84, s. 14; 2000-67, s. 7(c).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 7(c), effective July 1, 2000, substituted "State Controller" for "State Auditor" in subsection (a).

Article 6.

Textile Training School.

§ 115D-68. Creation of board of trustees; members and terms of office; no compensation.

Editor's Note. — Session Laws 2000-3, s. 3(e) provides that, for all purposes of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, which in part authorizes the issuance of general obligation bonds to provide grants to community colleges for capital improvements, the North Carolina Center for Applied Textile Technology is designated a community college, with a matching rate of less than forty percent (40%). The General Assembly finds that such designation is reasonable in that the Center is subject to policies and regulations of the State Board of Community Colleges, is governed by a board of trustees consisting of the President of the North Carolina System of Community Colleges and other members appointed by the Governor, and has a legislative directive to (i) assist individual citizens of North Carolina in becoming contributing members of a well-qualified workforce and (ii) assist in identification of problems confronting the textile industry and in solving these problems through education, training, and technology transfer in partnership with the North Carolina Community College System.

ARTICLE 8.

Proprietary Schools.

§ 115D-87. Definitions.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 9.13, directs the Legislative Research Commission to study current State programs governing the licensure and regulation of proprietary schools under this Article of the General Statutes, and specifically to consider the appropriate State agency and the level of personnel and of funding required to license and regulate the schools, the proportion of required funding that should be supported by license fees, and an appropriate fee schedule. The Commission is report the results of this study to the 2001 General Assembly.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Chapter 115E.

Private Educational Facilities Finance Act.

§§ 115E-1 through 115E-23: Recodified as §§ 159D-35 through 159D-57 by Session Laws 2000-179, s. 1, effective July 1, 2000.

Editor's Note. — This Chapter was rewritten by Session Laws 2000-179, s. 2, and recodified as Chapter 159D, Article 2, by Session Laws 2000-179, s. 1.

Chapter 116.

Higher Education.

Article 1.

The University of North Carolina.

Part 2. Organization, Governance and Property of the University.

Article 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

Editor's Note. —
Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 19, transfers the Center for Prevention of School Violence currently operating under the University of North Carolina, and all functions, powers, duties, and obligations vested in the University of North Carolina for the Center, to the Office of Juvenile Justice (now the Department of Juvenile Justice and Delinquency Prevention.) The Center, as a component of the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention), is to continue to consult with the University of North Carolina and the Department of Public Instruction to enhance research opportunities and specialized study areas such as teacher preparation, school resource officer development, suicide prevention, and best practices.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Part 2. Organization, Governance and Property of the University.

§ 116-11. Powers and duties generally.

Cross References. — For authority to use excess funds under the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, to meet increased costs of capital facilities located at the same institution, see the Editor's Note at § 116D-6.

Editor's Note. —

Session Laws 1998-212, s. 11.12(b) provides that the Board of Governors of The University of North Carolina shall further study and recommend to the Joint Legislative Education Oversight Committee, by December 15, 1998, any statutory or other organizational changes to assure oversight and coordination of program components of the UNC Center for School Leadership Development, including whether or not there are reasons that existing boards of these professional development programs should not be made advisory to the Board of Directors of the UNC Center for School Leadership Development. Session Laws 2000-67, s. 10.7, directs that of the funds appropriated to the Board of Governors of the University of North Carolina for the 2000-2001 fiscal year, the sum of $1,3000,000 is allocated to restore the model teacher consortium program to the 21 counties that were part of the program in 1998-99 and to add 8 additional counties.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 116-13.1. Capital facilities; reports.

(a) The General Assembly finds that although The University of North Carolina is one of the State's most valuable assets, the current facilities of the University have been allowed to deteriorate due to decades of neglect and have unfortunately fallen into a state of disrepair because of inadequate attention to maintenance. It is the intent of the General Assembly to reverse this trend and to provide a mechanism to assure that the University's capital assets are adequately maintained. The General Assembly commits to responsible stewardship of these assets to protect their value over the years, as follows:

(1) The Board of Governors of The University of North Carolina shall require each constituent and affiliated institution to monitor the condition of its facilities and their needs or repair and renovation, and to assure that all necessary maintenance is carried out within funds available.

(2) The Board of Governors shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee on the condition of the University's capital facilities, the repair, renovation, and maintenance projects being undertaken, and all needs for additional funding to maintain the facilities.

(3) It is the intent of the General Assembly to assure that adequate oversight, funding, and accountability are continually provided so that the capital facilities of the University are properly maintained to preserve the level of excellence the citizens of this State deserve. To this end, the Joint Legislative Education Oversight Committee shall report to the General Assembly annually its recommendations for legislative changes to implement this policy.

(b) Equity in University Improvements. — The Board of Governors of The University of North Carolina shall continue to study and monitor any inequities in funding for capital improvements and facilities needs which may still exist on North Carolina's Public Historically Black Colleges and Universities and the University of North Carolina at Pembroke, beyond the funding of the projects provided for in this act, and shall report annually to the Joint Legislative Commission on Governmental Operations on any remaining inequities found, including recommendations as to how those inequities should be addressed. (2000-3, ss. 1.1, 8.)

Editor's Note. — Session Laws 2000-3, ss. 1 and 8 were codified as this section the the direction of the Revisor of Statutes.

Session Laws 2000-3, s. 11, made the section effective May 25, 2000.

Session Laws 2000-3, s. 6, had duplicate text with Session Laws 2000-3, s. 1.1 (2) (subdivision (a)(2) of this section as codified) and has not been set out above.

§ 116-14. President and staff.

(a) The Board shall elect a President of the University of North Carolina. The President shall be the chief administrative officer of the University.

(b) The President shall be assisted by such professional staff members as may be deemed necessary to carry out the provisions of this Article, who shall be elected by the Board on nomination of the President. The Board shall fix the compensation of the staff members it elects. These staff members shall include a senior vice-president and such other vice-presidents and officers as may be deemed desirable. Provision shall be made for persons of high competence and strong professional experience in such areas as academic affairs, public service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs and institutional development, and for State and federal programs administered by the Board. In addition, the President shall be assisted by such other employees as may be needed to carry out the provisions of this Article, who shall be subject to the provisions of Chapter 126 of the General Statutes. The staff complement shall be established by the Board on recommendation of the President to insure that there are persons on the staff who have the professional competence and experience to carry out the duties assigned and to insure that there are persons on the staff who are familiar with the problems and capabilities of all of the principal types of institutions represented in the system. Subject to approval by the Board, the President may establish and abolish employment positions within the staff complement authorized by this subsection in the manner of and under the conditions prescribed by G.S. 116-30.4 for special responsibility constituent institutions.

(b1) The President shall receive General Fund appropriations made by the General Assembly for continuing operations of The University of North Carolina that are administered by the President and the President's staff complement established pursuant to G.S. 116-14(b) in the form of a single sum to Budget Code 16010 of The University of North Carolina in the manner and under the conditions prescribed by G.S. 116-30.2. The President, with respect to the foregoing appropriations, shall have the same duties and responsibilities that are prescribed by G.S. 116-30.2 for the Chancellor of a special responsibility constituent institution. The President may establish procedures for transferring funds from Budget Code 16010 to the constituent institutions for nonrecurring expenditures. The President may identify funds for capital improvement projects from Budget Code 16010, and the capital improvement projects may be established following the procedures set out in G.S. 143-18.1.

(b2) The President, in consultation with the State Auditor and the Director of the Office of State Personnel, shall ascertain that the management staff and internal financial controls are in place and continue in place to successfully administer the additional authority authorized under G.S. 116-14(b1) and G.S. 116-30.3(e). All actions taken by the President pursuant to G.S. 116-14(b1) and G.S. 116-30.3(e) are subject to audit by the State Auditor.

(c) The President, with the approval of the Board, shall appoint an advisory committee composed of representative presidents of the private colleges and universities and may appoint such additional advisory committees as are deemed necessary or desirable. (1971, c. 1244, s. 1; 1999-237, s. 10.14(b); 2000-140, s. 26.)

Effect of Amendments. — Session Laws 2000-140, s. 26, effective July 21, 2000, deleted a duplicate "in" preceding the phrase "in G.S.143-18.1" at the end of subsection (b1).

Part 3. Constituent Institutions.

§ 116-36.5. Centennial Campus trust fund; Horace Williams Campus trust fund; Millennial Campuses' trust funds.

(a) All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term "Centennial Campus" is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(b) All moneys received through development of the Horace Williams Campus of the University of North Carolina at Chapel Hill, from whatever source, including the net proceeds from the lease or rental of Horace Williams Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Horace Williams Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Horace Williams Campus and not an exclusive one. For purposes of this section the term "Horace Williams Campus" is defined by G.S. 116-198.33(4a). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(c) All moneys received through development of a Millennial Campus of a constituent institution of The University of North Carolina as defined by G.S. 116-198.33(4b), from whatever source, including the net proceeds from the lease or rental of real property on a Millennial Campus, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of that Millennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Millennial Campus and not an exclusive one. To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section. (1987, c. 790, s. 1; 1998-159, s. 1; 1999-234, s. 1; 2000-177, ss. 1, 2.)

Effect of Amendments. —

Session Laws 2000-177, ss. 1 and 2, effective August 2, 2000, added "Millennial Campuses' trust funds" in the catchline and added subsection (c).

§ 116-40.6. East Carolina University Medical Faculty Practice Plan.

OPINIONS OF ATTORNEY GENERAL

Real Property. — The "State of North Carolina" shall be named as the grantor/grantee in dispositions and acquisitions of real property on behalf of the Medical Faculty Practice Plan. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

Subsection (d) of this section does not exempt the Medical Faculty Practice Plan from the requirements contained in §§ 146-22 and 146-27 pertaining to consultation with the Joint Legislative Commission on Governmental Operations and approval by the Governor and Council of State with regard to acquisitions and dispositions of real property. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

Subsection (d) of this section does not authorize the Medical Faculty Practice Plan to employ outside legal counsel to perform legal services in connection with the acquisition and dispositions of real property. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ 116-189. Definitions.

As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "Board" shall mean the Board of Governors of the University of North Carolina.

(2) The word "cost," as applied to any project, shall include the cost of acquisition or construction, the cost of acquisition of all property, both real and personal, or interests therein, the cost of demolishing, removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for a period not exceeding one year after completion of such construction, provisions for working capital, reserves for debt service and for extensions, enlargements, additions and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project, and such other expenses as may be necessary or incident to the acquisition or construction of the project, the financing of such acquisition or

construction, and the placing of the project in operation. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The term "existing facilities" shall mean buildings and facilities then existing any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(4) The word "institution" shall mean each of the institutions enumerated in G.S. 116-2, the University of North Carolina Health Care System, and the University of North Carolina General Administration.

(5) The word "project" shall mean and shall include any one or more buildings, structures, or facilities of any size or type now or hereafter existing for (i) the housing, health, welfare, recreation, and convenience of students, (ii) the housing of faculty, (iii) academic, research, patient care, and community services, and (iv) parking at an institution or institutions, that has been approved by the Board and the Director of the Budget and any improvements or additions so approved to any such buildings, structures, or facilities, including, but without limiting the generality thereof, dormitories and other student, faculty, and adult or continuing education housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, infirmaries and other health care buildings, academic facilities, furnishings, equipment, parking facilities, and necessary land and interest in land. Any project may include, without limiting the generality thereof, facilities for services such as lounges, restrooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar services, rooms and other facilities for guests and visitors, and facilities for meetings and for recreational, cultural, and entertainment activities.

(6) The word "revenues" shall mean all or any part of the rents, charges, fees (including student fees) and other income revenues derived from or in connection with any project or projects and existing facilities, and may include receipts and other income derived from athletic games and public events. (1963, c. 847, s. 3; 1965, c. 31, s. 3; 1967, c. 1038; c. 1148, s. 2; 1969, c. 297, s. 8; c. 388; c. 608, s. 1; c. 801, ss. 2-4; 1971, c. 1061, s. 2; c. 1244, s. 16; 1979, c. 731, s. 6; 1983, c. 577, s. 8; 1989, c. 141, s. 5; 2000-168, ss. 4, 5.)

Effect of Amendments. — Session Laws 2000-168, ss. 4 and 5, effective August 2, 2000, in subdivision (4), substituted "Health Care System, and the University of North Carolina General Administration" for "Hospitals at Chapel Hill"; rewrote subdivision (5); and made a minor wording change.

Article 21B.

The Centennial Campus, the Horace Williams Campus, and the Millennial Campuses Financing Act.

§ 116-198.31. Purpose of Article.

The purpose of this Article is to authorize the Board of Governors of The University of North Carolina to issue revenue bonds, payable from any leases, rentals, charges, fees, and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or part, of buildings, structures, or other facilities for the Centennial Campus, located at North Carolina State University at Raleigh, for the Horace Williams Campus located at the University of North Carolina at Chapel Hill, and for any Millennial Campus as defined by G.S. 116-198.33(4b). (1987, c. 336, s. 1; 1999-234, s. 3; 2000-177, ss. 3, 4.)

Effect of Amendments. —

Session Laws 2000-177, ss. 3 and 4, effective August 2, 2000, added "and the Millennial Campuses" and made stylistic changes in the article heading; and added "and for any Millennial Campus as defined by G.S. 116-198.33(4b)" and made a minor wording and punctuation change in the section.

§ 116-198.33. Definitions.

As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "Board" shall mean the Board of Governors of The University of North Carolina.

(2) The word "cost" as applied to any project, shall include the cost of acquisition or construction; the cost of acquisition of all property, both real and personal, or interests therein; the cost of demolishing, removing, or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be removed or relocated; the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for a period not exceeding one year after completion of such construction; provisions for working capital, reserves for debt service and for extensions, enlargements, additions, and improvements; cost of engineering, financial, and legal services, plans, specifications, studies, surveys, and estimates of cost and of revenues; administrative expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses as may be necessary or incident to acquisition or construction with respect to the project or to the placing of the project in operation. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The word "Institution" shall mean North Carolina State University at Raleigh and the University of North Carolina at Chapel Hill, or a constituent institution of The University of North Carolina with a Millennial Campus as defined by G.S. 116-198.33(4b).

(4) The term "Centennial Campus" means all of the following properties:

a. The real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program.

b. The real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard.

c. All other real property and appurtenant facilities designated by the Board of Governors as part of the Centennial Campus. The properties designated by the Board of Governors do not have to be contiguous with the Centennial Campus to be designated as part of that Campus.

(4a) The term "Horace Williams Campus" means all of the following properties:
a. The real property and appurtenant facilities left to the University of North Carolina at Chapel Hill by the Will of Henry Horace Williams.
b. All other real property and appurtenant facilities designated by the Board of Governors as part of the Horace Williams Campus. The properties designated by the Board of Governors do not have to be contiguous with the Horace Williams Campus to be designated as part of that Campus.

(4b) The term "Millennial Campus" means all real property and appurtenant facilities designated by the Board of Governors as part of a Millennial Campus of a constituent institution of The University of North Carolina other than North Carolina State University or the University of North Carolina at Chapel Hill. The properties designated by the Board of Governors do not have to be contiguous with the constituent institution to be designated as part of the institution's Millennial Campus.

(5) The term "existing facilities" shall mean buildings and facilities, then existing, any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(6) The word "project" shall mean and shall include any one or more buildings, structures, administration buildings, libraries, research or instructional facilities, housing maintenance, storage, or utility facilities, and any facilities related thereto or required or useful for conducting of research or the operation of the Centennial Campus, the Horace Williams Campus, or of a Millennial Campus as defined by G.S. 116-198.33(4b), including roads, water, sewer, power, gas, greenways, parking, or any other support facilities essential or convenient for the orderly conduct of the Centennial Campus, the Horace Williams Campus, or a Millennial Campus, respectively.

(7) The word "revenues" shall mean all or any part of the rents, leases, charges, fees, and other income revenues derived from or in connection with any project or projects and existing facilities. (1987, c. 336, s. 1; 1998-159, s. 2; 1999-234, s. 4; 2000-177, s. 5.)

Effect of Amendments. — Session Laws 2000-177, s. 5, effective August 2, 2000, added "or a constituent institution of The University of North Carolina with a Millennial Campus as defined by G.S. 116-198.33(4b)" in subdivision (3); added subdivision (4b); and in subdivision (6), inserted "or of a Millennial Campus as defined by G.S. 116-198.33(4b)," inserted "or a Millennial Campus," and made minor wording and punctuation changes.

§ 116-198.34. General powers of Board of Governors.

The Board may exercise any one or more of the following powers:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing facilities.

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same.

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or projects.

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing facilities.

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities upon such terms and conditions as the Board determines, subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus, on the Horace Williams Campus, or on a Millennial Campus made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation.

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article.

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided.

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial Campus, the Horace Williams Campus, or a Millennial Campus.

(8b) Acting on recommendation made by the President of The University of North Carolina after consultation by the President with the Chancellor and the Board of Trustees of a constituent institution, to designate real property held by, or to be acquired by, a constituent institution as a "Millennial Campus" of the institution. That designation shall be based on an express finding by the Board of Governors that the institution desiring to create a "Millennial Campus" has the administrative and fiscal capability to create and maintain such a campus and provided further, that the Board of Governors has found that the creation of the constituent institution's "Millennial Campus" will enhance the institution's research, teaching, and service missions as well as enhance the economic development of the region served by the institution. Upon formal request by the constituent institutions, the Board of Governors may authorize two or more constituent institutions which meet the requirements of this section to create a joint Millennial Campus.

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article. (1987, c. 336, s. 1; 1998-159, s. 3; 1999-234, s. 5; 2000-177, s. 6.)

Effect of Amendments. —
Session Laws 2000-177, s. 6, effective August 2, 2000, in the second paragraph of subdivision (5), inserted "or on a Millennial Campus"; in subdivision (8a), inserted "or a Millennial Campus"; added subdivision (8b); and made minor wording and punctuation changes.

§ 116-198.35. Issuance of bonds and bond anticipation notes.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing, or providing any project or projects on the Centennial Campus, on the Horace Williams Campus, or on a Millennial Campus. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both or as book-entry bonds, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board 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 Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Article. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any notes or coupons shall cease to be such officer before the delivery of such notes, 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. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all such notes shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such notes or any trust agreement securing the bonds in anticipation of which such notes are being issued. The notes may be issued in coupon or registered form or both or as book entry notes, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds or in the trust agreement securing such bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the bonds in anticipation of which such notes are being authorized, may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, notes may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

Unless the context shall otherwise indicate, the word "bonds" wherever used in this Article, shall be deemed and construed to include the words "bond anticipation notes." (1987, c. 336, s. 1; 1999-234, s. 6; 2000-177, s. 7.)

Effect of Amendments. —
Session Laws 2000-177, s. 7, effective August 2, 2000, inserted "or on a Millennial Campus" and made a minor wording and punctuation change in the first paragraph.

§ 116-198.37. Fixing fees, rents, and charges; sinking fund.

For the purpose of aiding in the acquisition, construction, or provision of any project and the maintenance, repair, and operation of any project or any existing facilities, the Board is authorized to fix, revise from time to time, charge, and collect such fee or fees for such privileges and services and in such amount or amounts as the Board shall determine, and to fix, revise from time to time, charge, and collect other fees, rents, and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion thereof, and to contract with any person, partnership, association, or corporation for the lease, use, occupancy, or operation of any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents, and charges for any such lease, use, occupancy, or operation. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents, and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing, and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Any surplus funds remaining after application to the purposes mentioned in (i), (ii), and (iii), above, shall be held in trust and applied by the Board to the development of the Centennial Campus, the Horace Williams Campus, or a Millennial Campus, as applicable. Such fees, rents, and charges shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made;

the fees, rents, and charges and other revenues or other moneys so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same. (1987, c. 336, s. 1; 1999-234, s. 7; 2000-177, s. 8.)

Effect of Amendments. —
Session Laws 2000-177, s. 8, effective August 2, 2000, inserted "or a Millennial Campus" and made a minor wording and punctuation change.

Article 23.

State Education Assistance Authority.

§ 116-209.25. (Effective July 1, 2001) Parental Savings Trust Fund.

(a) Policy. — The General Assembly of North Carolina hereby finds and declares that encouraging parents and other interested parties to save for the postsecondary education expenses of eligible students is fully consistent with and furthers the long-established policy of the State to encourage, promote, and assist education as more fully set forth in G.S. 116-201(a).

(b) Parental Savings Trust Fund. — There is established a parental savings trust fund to be administered by the State Education Assistance Authority to enable qualified parents to save funds to meet the costs of the postsecondary education expenses of eligible students.

(c) Contributions to the Trust Funds. — The Authority is authorized to accept, hold, invest, and disburse contributions, and interest earned on such contributions, from qualified parents and other interested parties as trustee of the Parental Savings Trust Fund. The Authority shall hold all contributions to the Parental Savings Trust Fund, and any earnings thereon, in a separate trust fund and shall invest the contributions in accordance with this section. The assets of the Parental Savings Trust Fund shall at all times be preserved, invested, and expended solely for the purposes of the trust fund and shall be held in trust for the parents and other interested parties and their designated beneficiaries. Neither the contributions to the Parental Savings Trust Fund, nor the earnings thereon, shall be considered State moneys, assets of the State, or State revenue for any purpose.

(c1) Investments. — The Authority shall determine an appropriate investment strategy for the Parental Savings Trust Fund. The strategy may include a combination of fixed income assets and preferred or common stocks issued by any company incorporated, or otherwise located within or without the United States, or other appropriate investment instruments to achieve long-term return through a combination of capital appreciation and current income. The Authority may deposit all or any portion of the Parental Savings Trust Fund for investment either with the State Treasurer, or in the individual, common, or collective trust funds of an investment manager or managers that meet the requirements of this subsection. Contributions to the Parental Savings Trust Fund on deposit with the State Treasurer shall be invested by the State

§ 116-209.25 has a postponed effective date. See notes.

Treasurer as authorized in G.S. 147-69.2(b)(1) through (6) and the applicable provisions of G.S. 147-69.3. Contributions to the Parental Savings Trust Fund may be invested in the individual, common, or collective trust funds of an investment manager provided that the investment manager meets both of the following conditions:

(1) The investment manager has assets under management of at least one hundred million dollars ($100,000,000) at all times.

(2) The investment manager is subject to the jurisdiction and regulation of the United States Security and Exchange Commission.

(d) Administration of the Trust Fund. — The Authority is authorized to develop and perform all functions necessary and desirable to administer the Parental Savings Trust Fund and to provide such other services as the Authority shall deem necessary to facilitate participation in the Parental Savings Trust Fund. The Authority is further authorized to obtain the services of such investment advisors or program managers as may be necessary for the proper administration and marketing and investment strategy for the Parental Savings Trust Fund.

(e) Loan Program. — The Authority is authorized to develop and administer a loan program in conjunction with the Parental Savings Trust Fund to provide loan assistance to qualified parents and interested parties in order to facilitate the postsecondary education of eligible students. All funds appropriated to, or otherwise received by the Authority for loans under this section, all funds received as repayment of such loans, and all interest earned on these funds shall be placed in an institutional trust fund. This institutional trust fund may be used only for loans made to qualified parents and interested parties who contributed to the Parental Savings Trust Fund and administrative costs associated with the recovery of funds advanced under this loan program.

(f) Limitations. — Nothing in this section shall be construed to create any obligation of the Authority, the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the benefit of any parent, other interested party, or designated beneficiary the rate of return or other return for any contribution to the Parental Savings Trust Fund and the payment of interest or other return on any contribution to the Parental Savings Trust Fund. (1996, 2nd Ex. Sess., c. 18, s. 16.7; 2000-177, s. 11.)

For this section as in effect until July 1, 2001, see the main volume.

Effect of Amendments. — Session Laws 2000-177, s. 11, effective July 1, 2001, rewrote subsection (c); added subsection (c1); added the last sentence in subsection (d); and added subsection (f).

Article 26.

Liability Insurance or Self-Insurance.

§ 116-220. Establishment and administration of self-insurance trust funds; rules and regulations; defense of actions against covered persons; application of § 143-300.6.

(a) In the event the Board elects to act as self-insurer of a program of liability insurance, it may establish one or more insurance trust accounts to be used only for the purposes authorized by this Article: Provided, however, said program of liability insurance shall not be subject to regulation by the

Commissioner of Insurance. The Board is authorized to receive and accept any gift, donation, appropriation or transfer of funds made for the purposes of this section and to deposit such funds in the insurance trust accounts. All expenses incurred in collecting, receiving, and maintaining such funds and in otherwise administering the self-insured program of liability insurance shall be paid from such insurance trust accounts.

(b) Subject to all requirements and limitations of this Article, the Board is authorized to adopt rules and regulations for the establishment and administration of the self-insured program of liability insurance, including, but not limited to, rules and regulations concerning the eligibility for and terms and conditions of participation in the program, the assessment of charges against participants, the management of the insurance trust accounts, and the negotiation, settlement, litigation, and payment of claims.

(c) The Board is authorized to create a Liability Insurance Trust Fund Council composed of not more than 13 members; one member each shall be appointed by the State Attorney General, the State Auditor, the State Insurance Commissioner, the Director of the Office of State Budget, Planning, and Management, and the State Treasurer; the remaining members shall be appointed by the Board. Subject to all requirements and limitations of this Article and to any rules and regulations adopted by the Board under the terms of subsection (b) of this section, the Board may delegate to the Liability Insurance Trust Fund Council responsibility and authority for the administration of the self-insured liability insurance program and of the insurance trust accounts established pursuant to such program.

(d) Defense of all suits or actions against an individual health-care practitioner who is covered by a self-insured program of liability insurance established by the Board under the provisions of this Article may be provided by the Attorney General in accordance with the provisions of G.S. 143-300.3 of Article 31A of Chapter 143; provided, that in the event it should be determined pursuant to G.S. 143-300.4 that defense of such a claim should not be provided by the State, or if it should be determined pursuant to G.S. 143-300.5 and G.S. 147-17 that counsel other than the Attorney General should be employed, or if the individual health-care practitioner is not an employee of the State as defined in G.S. 143-300.2, then private legal counsel may be employed by the Liability Insurance Trust Fund Council and paid for from funds in the insurance trust accounts.

(e) For purposes of the requirements of G.S. 143-300.6, the coverage provided State employees by any self-insured program of liability insurance established by the Board pursuant to the provisions of this Article shall be deemed to be commercial liability insurance coverage within the meaning of G.S. 143-300.6(c).

(f) By rules or regulations adopted by the Board in accordance with G.S. 116-220(b) of this Article, the Board may provide that funds maintained in insurance trust accounts under such a self-insured program of liability insurance may be used to pay any expenses, including damages ordered to be paid, which may be incurred by the University of North Carolina, a constituent institution of the University of North Carolina, or the University of North Carolina Hospitals at Chapel Hill with respect to any tort claim, based on alleged negligent acts in the provision of health-care services, which may be prosecuted under the provisions of Article 31 of Chapter 143 of the General Statutes. (1975, 2nd Sess., c. 976; 1987, c. 263, s. 1; 1989, c. 141, s. 7; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (c).

Chapter 116B.

Escheats and Abandoned Property.

Article 4.

North Carolina Unclaimed Property Act.

Article 1.

Escheats.

§ 116B-1. Escheats to Escheat Fund.

Cross References. — As to establishment of a pilot program for the removal of abandoned vessels in the Neuse River Basin, see the editor's note at § 76-40.

Article 4.

North Carolina Unclaimed Property Act.

§ 116B-51. Short title.

Cross References. — As to establishment of a pilot program for the removal of abandoned vessels in the Neuse River Basin, see the editor's note at § 76-40.

§ 116B-66. Claim of another state to recover property.

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state; or

(4) Repealed by Session Laws 2000, c. 140, s. 27, effective July 21, 2000.

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(a)(6), and

under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property. (1999-460, s. 6; 2000-140, s. 27.)

Effect of Amendments. — Session Laws 2000-140, s.27, effective July 21, 2000, repealed subdivision (a)(4), pertaining to property subjected to custody, and substituted "G.S. 116B-56(a)(6)" for "G.S. 116B-56(7)" in subdivision (a)(5).

Chapter 116C.
Continuum of Education Programs.

§ 116C-1. Education Cabinet created.

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 9.2.(b), effective July 1, 2000, provides: "The General Assembly believes educational programs for high school students should provide student accountability, program accountability, access, and efficiency. Therefore, the Education Cabinet, created under G.S.116C-1, shall study public school, community college, and university programs offered to high school students. These programs include the cooperative high school program, the adult high school diploma program, advanced placement courses, honors courses, and university courses offered to high school students. The Cabinet shall do the following:

"(1) Examine these programs for overlap.

"(2) Consider which education entity is the most appropriate one to offer each program.

"(3) Consider distance learning options.

"(4) Examine whether there should be tuition waivers for high school students who take courses at community colleges or universities.

"(5) Determine whether there should be a minimum age for participation in the adult high school program.

"(6) Determine the feasibility, advantages and disadvantages, procedures, and costs for requiring students who participate in the adult high school program to take tests required of high school students taking the same courses.

"(7) Evaluate the recent recommendations concerning the cooperative high school program that were made to the Joint Legislative Education Oversight Committee by the State Board of Education and the State Board of Community Colleges. In particular, the Cabinet shall determine whether students should receive weighted credit on their high school transcripts for college level courses taken at community colleges, universities, or colleges, and whether this program is an appropriate venue for developmental courses.

"The Cabinet shall report its findings, including any recommendations, to the Joint Legislative Education Oversight Committee by January 8, 2001."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Chapter 116D.

Higher Education Bonds.

Article 1.

General Provisions.

§ 116D-1. Definitions.

The following definitions apply in this Chapter:

(1) Board of Governors. — The Board of Governors of the University.

(2) Capital facility. — Any one or more of the following for the University or for a community college:

a. One or more buildings, utilities, structures, or other facilities or property developments, including streets and landscaping, and the acquisition of equipment and furnishings in connection therewith.

b. Additions, extensions, enlargements, renovations, and improvements to existing buildings, utilities, structures, or other facilities or property developments, including streets and landscaping.

c. Land or an interest in land.
d. Other infrastructure.
The term includes, without limitation, classroom buildings, laboratory buildings, research facilities, libraries, physical education facilities, continuing education centers, student cafeterias, and activity facilities, including sports facilities, student and faculty housing facilities, and administrative office facilities.

(3) Cost. — Any of the following in financing the cost of capital facilities and special obligation bond projects, as authorized by this Chapter:
a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring, and improving capital facilities and special obligation bond projects, including the acquisition of land, rights-of-way, easements, franchises, equipment, furnishings, and other interests in real or personal property acquired or used in connection with a capital facility or special obligation bond project.
b. The cost of engineering, architectural, and other consulting services as may be required.
c. The cost of providing personnel to ensure effective project management.
d. Finance charges, reserves for debt service, and interest prior to and during construction.
e. Administrative expenses and charges incurred by the State in connection with the administration of a bond program created under this Chapter.
f. The cost of bond insurance, investment contracts, credit enhancement, and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance.
g. The cost of reimbursing the State for any payments made for any cost described in this subdivision.
h. Any other costs and expenses necessary or incidental to the purposes of this Chapter.

(4) Credit facility. — An agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States, and providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State's agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.

(5) Fiscal period. — A fiscal biennium or a fiscal year of the fiscal biennium.

(6) Fiscal year. — The fiscal year of the State beginning on July 1 of one calendar year and ending on June 30 of the next calendar year.

(7) Par formula. — A provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne or provided for by any bonds or notes, including:
a. A provision providing for an adjustment so that the purchase price of bonds or notes in the open market would be as close to par as possible.
b. A provision providing for an adjustment based upon a percentage or percentages of a prime rate or base rate, which percentages may vary or be applied for different periods of time.

c. A provision that the State Treasurer determines is consistent with this Chapter and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

(8) Securities issued under this Chapter. — Any of the following:

a. University improvement general obligation bonds, refunding bonds, notes, and refunding notes issued under Article 2 of this Chapter.

b. Special obligation bonds, bond anticipation notes, and refunding bonds issued under Article 3 of this Chapter.

c. Community college general obligation bonds, refunding bonds, notes, and refunding notes issued under Article 4 of this Chapter.

(9) State. — The State of North Carolina.

(10) State Treasurer. — The incumbent Treasurer, from time to time, of the State.

(11) University. — The University of North Carolina and its constituent and affiliated institutions, including, without limitation, the University of North Carolina Center for Public Television, the University of North Carolina Health Care System, the North Carolina School of Science and Mathematics, and the North Carolina Arboretum. (2000-3, s. 1.2.)

Editor's Note. — Session Laws 2000-3, s. 1, provides: "This act shall be known as the Michael K. Hooker Higher Education Facilities Financing Act."

Session Laws 2000-3, s. 11, made this Article effective May 25, 2000.

Session Laws 2000-3, s. 2, makes provisions for the proceeds of the University Improvement General Obligation Bonds, and s. 3 makes provisions for proceeds of Community College General Obligation Bonds. See Editor's Notes at §§ 116D-6 and 116D-41.

Session Laws 2000-3, s. 5(a) through (c), provides:

"Interpretation of Act.

"(a) Additional Method. This act provides an additional and alternative method for the doing of the things authorized by this act and shall be regarded as supplemental and additional to powers conferred by other laws. Except where expressly provided, this act shall not be regarded as in derogation of any powers now existing. The authority granted in this act is in addition to other laws now or hereinafter enacted authorizing The University of North Carolina to issue self-liquidating debt or other debt secured by designated sources of funds."

"(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly.

"(c) Liberal Construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-3, s. 5(d), contains a severability clause.

Session Laws 2000-3, s. 10, provides that the question of the issuance of the bonds authorized by Articles 2 and 4 of Chapter 116D of the General Statutes, as enacted by the act, and authorized by Sections 2 and 3 of the act, shall be submitted to the qualified voters of the State at the statewide general election to be held in November 2000, which election shall be conducted under the laws governing elections. Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond question to be used in the ballots or voting systems shall be in substantially the following form:

[ ] FOR [ ] AGAINST

the issuance of State of North Carolina Higher Education Improvement Bonds, constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to pay all or part of the cost of (i) renovating laboratories, classrooms, academic buildings, and worker training facilities and providing other capital improvements at the 59 institutions of the North Carolina Community College System in order to fulfill the mission of educating students and providing worker training essential to the North Carolina economy, and to address expected large increases in student enrollment, and (ii) renovating and replacing classrooms, laboratories, and academic buildings and providing other capital improvements at the 16 campuses of the constituent institutions, the affiliated institutions, and the Center for Public Television (UNC-TV) of the University of North

Carolina System in order to meet large expected student enrollment increases, serve North Carolina by providing the education critical to the State's economy, and continue to provide UNC-TV public television to the State's viewers; in the amount of three billion one hundred million dollars ($3,100,000,000).

The section further provides that if a majority of those voting on the bond question in the election vote in favor of the issuance of the bonds, the bonds may be issued as provided in this act, and if a majority of those voting on the bond question in the election do not vote for the issuance of the bonds, the bonds shall not be issued. The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Session Laws 2000-3, s. 6, had duplicate text which Session Laws 2000-3, s. 1.1(2), which was codified as § 116-13.1(a)(2).

§ 116D-2. General provisions.

(a) Signatures. — Should any officer whose signature or facsimile signature appears on securities issued under this Chapter cease to be that officer before the delivery of the securities, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery of the securities. Securities issued under this Chapter may bear the facsimile signatures of persons, who at the actual time of the execution of the securities were the proper officers to sign any security although at the date of the security those persons may not have been officers.

(b) Tax Exemption. — Securities issued under this Chapter shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting estate, inheritance, or gift taxes, income taxes on the gain from the transfer of the securities, and franchise taxes. The interest on the securities is not subject to taxation as income.

(c) Investment Eligibility. — Securities issued under this Chapter are securities in which all of the following may invest, including capital in their control or belonging to them: public officers, agencies, and public bodies of the State and its political subdivisions, insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries. Securities issued under this Chapter are securities which may properly and legally be deposited with and received by any officer or agency of the State or a political subdivision of the State for any purpose for which the deposit of bonds or notes of the State or any political subdivision is now or may later be authorized by law.

(d) Inconsistent Laws. — All general, special, or local laws that are inconsistent with this Chapter do not apply to this Chapter. (2000-3, s. 1.2.)

§ 116D-3. Reports.

(a) Board of Governors. — The Board of Governors shall report to the Joint Legislative Commission on Governmental Operations by September 15 of each year, and more frequently as the Commission requests, on the following:

(1) University Improvement General Obligation Bonds. — The Board of Governors shall report on projects funded by university improvement general obligation bonds under Article 2 of this Chapter, including the total project costs, the amount to be funded from the bonds, the expenditures to date from the bonds and other sources, and the percentage of each project completed. Each annual report shall include estimated operating costs for each project begun in the preceding fiscal year, including proposed sources of funds and anticipated dates for occupancy. Operating costs shall be projected for a

period of at least 20 years from the date of anticipated project completion.

(2) Special Obligation Bonds. — The Board of Governors shall report on special obligation bonds issued under Article 3 of this Chapter, including the amount of debt, itemized for each institution of the University, by bond issue, and by project. The report shall include schedules of debt service requirements and actual payments, as well as evidence of compliance with additional financial covenants required by bond documents. The report shall identify the trends and current revenue streams of the sources of obligated resources pledged for each bond issue.

(b) Treasurer. — Upon issuance of university improvement general obligation bonds under Article 2 of this Chapter or community college general obligation bonds under Article 4 of this Chapter, the Treasurer shall forward a schedule of required payments of principal and interest over the life of the bonds to the Director of the Budget, with copies to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The Treasurer shall report to the Joint Legislative Commission on Governmental Operations by September 15 of each year, and more frequently as the Commission requests, on the university improvement general obligation bonds issued under Article 2 of this Chapter and community college general obligation bonds issued under Article 4 of this Chapter, including the annual debt service requirements over the remainder of the life of the bonds.

(c) Community Colleges. — The Community Colleges System Office shall report quarterly to the Joint Legislative Education Oversight Committee on the projects funded from community college general obligation bonds. Each report shall include the total project costs, the amount to be funded from the bonds, the expenditures to date from the bonds and other sources, and the percentage of each project completed. (2000-3, s. 1.2.)

Cross References. — As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under § 116D-1. As to the duty of the Board of Governors to include, in its periodic report under this section, details of all allocations for repairs and renovations and cost overruns from bond proceeds allocated to the reserve, see the editor's notes under § 116D-6.

§ 116D-4. Minority and historically underutilized business participation.

(a) Minority Business Participation. — The goals set by G.S. 143-128 for participation in projects by minority businesses apply to projects funded by the proceeds of bonds or notes issued under this section. The following State agencies shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority businesses in these projects. The State Construction Office, Department of Administration, shall monitor compliance with regard to projects funded by the proceeds of university improvement general obligation bonds and notes and special obligation bonds and notes; the Board of Governors of The University of North Carolina shall provide the State Construction Office any information required by the State Construction Office to monitor compliance. The Community Colleges System Office shall monitor compliance with regard to projects funded by the proceeds of community college general obligation bonds and notes.

(b) [Participation in providing professional services.] — The Department of State Treasurer shall provide contracting opportunities for historically underutilized businesses in providing professional services in connection with the issuance of bonds and notes authorized by this section. As used in this subsection, the term "historically underutilized business" means a business described in G.S. 143-48. The Department of State Treasurer shall strive to increase the amount of legal, financial, and other professional services acquired by it from historically underutilized businesses. With the assistance of the Office for Historically Underutilized Businesses in the Department of Administration, the Department of State Treasurer shall set objectives for contracting with these businesses, identify and eliminate barriers or constraints that may restrict these businesses from contracting with the Department, and develop a plan for meeting its objectives. The Department of State Treasurer shall report quarterly to the Office for Historically Underutilized Businesses on its progress in carrying out the requirements of this subsection. (2000-3, s. 7(a), (b).)

Editor's Note. — Session Laws 2000-3, s. 7(a) and (b), was codified as this section and the bracketed text inserted at the direction of the Revisor of Statutes.

§ 116D-5. Higher Education Bond Oversight Committee.

(a) Creation and Membership. — The Higher Education Bond Oversight Committee is established. The Committee shall be located administratively in the General Assembly. The Committee shall consist of 10 members appointed as provided below. In making appointments, each appointing officer shall select members who have appropriate experience and knowledge of the issues to be examined by the Committee and shall strive to ensure geographical diversity among the membership.

(1) Three members shall be appointed by the Speaker of the House of Representatives.
(2) Three members shall be appointed by the President Pro Tempore of the Senate.
(3) Two members shall be appointed by the Chair of the Board of Governors of The University of North Carolina.
(4) Two members shall be appointed by the Chair of the State Board of Community Colleges.

(b) Terms. — Terms on the Committee are for three years and begin on January 15, except the terms of the initial members, which begin on appointment. A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

(c) Duties. — The Committee shall:

(1) Call for reports and presentations from the following parties and convene for the purpose of hearing from the following parties:
  a. The University Facilities Office of each institution of The University of North Carolina.
  b. The Facilities Office of the General Administration of The University of North Carolina.
  c. The State Construction Office of the Department of Administration.
  d. The president of each community college, or the president's designee.
  e. The Administrative and Facilities Services Section of the North Carolina Community College System Office.
  f. The State Treasurer.
(2) Analyze and prepare recommendations, based on the information received under subdivision (1) of this subsection, concerning the following issues:
  a. Whether expenditures of the proceeds from the bonds issued under the Michael K. Hooker Higher Education Facilities Financing

Act, S.L. 2000-3, are in compliance with the provisions of the Michael K. Hooker Higher Education Facilities Financing Act, S.L. 2000-3.

b. Whether the awarded contracts are consistent with the budget and scope of the approved projects.

c. Whether changes in construction methods could enhance cost savings and promotion of on-time completion of projects.

d. Whether the bond issuances are adequately timed to reflect cash-flow requirements of the projects.

(d) Reports. — The Committee shall report semiannually to the Board of Governors of The University of North Carolina, the State Board of Community Colleges, and the Joint Legislative Commission on Governmental Operations.

(e) Organization. — The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The Committee shall meet at least once a quarter upon the joint call of the cochairs. A quorum of the Committee is six members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

(f) Funding. — From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Higher Education Bond Oversight Committee. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5.

(g) Staff. — The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

(h) Expiration. — The Higher Education Bond Oversight Committee terminates upon completion of all projects funded by bond proceeds issued under the Michael K. Hooker Higher Education Facilities Financing Act, S.L. 2000-3. (2000-3, s. 4(a)-(h).)

Editor's Note. — Session Laws 2000-3, s. 4(a)-(h), was codified as this section and internal references changed at the direction of the Revisor of Statutes.

Article 2.

General Obligation Bonds for Financing Capital Facilities for The University of North Carolina.

§ 116D-6. Short title.

This Article may be cited as the University Improvement General Obligation Bonds Finance Act. (2000-3, s. 1.2.)

Editor's Note. — Session Laws 2000-3, s. 11, made this Article effective May 25, 2000.

As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under § 116D-1.

Session Laws 2000-3, s. 2(a), directs that the proceeds of university improvement general obligation bonds and notes, including any premium thereon, except the proceeds of university improvement general obligation bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, are to be allocated and expended for paying the cost of university capital facilities, to the extent and as provided in Article 2 of Chapter 116D of the General Statutes, as enacted by the act and subject to change as provided in the act, and sets out a schedule of allocations for each of the constituent or affiliated institutions, totaling $2,500,000,000.00.

Session Laws 2000-3, s. 2(b), authorizes the Director of the Budget to use excess funds to meet increased costs of other capital facilities located at the same institution, where the cost of a particular capital facility is less than the amount allocated for it and to do so would be in the best interest of the State and the University, and directs the Director to report to the Joint Legislative Commission on Governmental Operations on any such changes. Section 2(b) further authorizes the General Assembly, in its discretion, from time to time, to change any capital facility and the amount of the allocation for it set forth in the act. The provisions of G.S. 116-11(9) with respect to appropriations to the Board of Governors of The University of North Carolina do not apply to proceeds of university improvement general obligation bonds and notes issued pursuant to Article 2 of Chapter 116D of the General Statutes, as enacted by the act.

Session Laws 2000-3, s. 2(c), provides that allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in the act in connection with the issuance of university improvement general obligation bonds for that capital improvement or undertaking.

Session Laws 2000-3, s. 2(d), provides that the validity of university improvement general obligation bonds and notes issued under Article 2 of Chapter 116D of the General Statutes, as enacted by the act, is not affected by any subsequent adjustment of allocations, or by any failure to comply with the reporting requirements provided in the act.

Session Laws 2000-3, s. 2(e), provides that bond proceeds allocated to the reserve for repairs and renovations and cost overruns are to be used only for repairs and renovations for institutions listed in the section and for additional costs needed for projects listed due to cost overruns. The subsection authorizes the Board of Governors, subject to the approval of the Director of Budget, to determine the capital facilities for which bond proceeds in the reserve may be used. The Board of Governors is directed to include the details of all allocations made pursuant to this subsection in its periodic reports under G.S. 116D-3 to the Joint Legislative Commission on Governmental Operations.

Session Laws 2000-3, s. 2(f), provides that it is the intent of the General Assembly that every effort be made to preserve the architectural and historic fabric of the buildings being renovated pursuant to the section.

§ 116D-7. Definitions.

The following definitions apply in this Article:

(1) Bonds. — Bonds authorized to be issued under this Article, including refunding bonds.

(2) Notes. — Notes issued under this Article.

(3) University improvement general obligation bonds. — Bonds authorized to be issued under this Article, including refunding bonds. (2000-3, s. 1.2.)

§ 116D-8. Authorization of bonds and notes.

Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing university improvement general obligation bonds in the election held as provided by law, the State Treasurer may, by and with the consent of the Council of State, issue and sell, at one time or from time to time, university improvement general obligation bonds of the State to be designated "State of North Carolina University Improvement General Obligation Bonds', with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State. Except as otherwise provided by this Article, the aggregate amount of bonds and notes issued pursuant to this Article shall not exceed two billion five hundred million dollars ($2,500,000,000). The bonds and notes shall be issued in the following years up to the following amounts:

Fiscal Year	Aggregate Amount
2000-2001	$ 201,600,000
2001-2002	241,900,000
2002-2003	483,900,000
2003-2004	483,900,000
2004-2005	564,500,000
2005-2006	524,200,000

If less than the aggregate amount of bonds or notes authorized to be issued in a fiscal year is issued in that fiscal year, the balance for that fiscal year may be issued in any subsequent fiscal year. Refunding bonds and notes issued pursuant to G.S. 116D-11(f) shall not be included in the limitation on the aggregate amount of bonds and notes that may be issued pursuant to this Article.

The proceeds of bonds or notes issued under this Article shall be applied to finance the cost of improvement, construction, and acquisition of capital facilities for the University or to refund any outstanding bonds or notes issued under this Article. The capital facilities to be improved, constructed, or acquired with the proceeds of bonds or notes shall be determined as provided in G.S. 116D-9. (2000-3, s. 1.2.)

§ 116D-9. Designation of capital facilities and preconditions to bond issuance.

The capital facilities to be financed in whole or in part with the proceeds of university improvement general obligation bonds shall be set forth in legislation enacted from time to time by the General Assembly. This legislation shall also provide for voter approval of the bonds to finance the capital facilities and shall become effective only upon approval by the voters. The proceeds of university improvement general obligation bonds shall not be expended to pay the costs of any capital facilities other than those set forth in that legislation. (2000-3, s. 1.2.)

§ 116D-10. Faith and credit.

The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. The State retains the right to amend any provision of this Article to the extent it does not impair any contractual right of a bond owner. (2000-3, s. 1.2.)

§ 116D-11. Issuance of bonds and notes.

(a) Terms and Conditions. — Bonds or notes may bear any dates, may be serial or term bonds or notes, or any combination of these, may mature in any amounts and at any times, not exceeding 25 years from their dates, may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts, may bear interest at any rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. — Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile of the Seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this Article.

(c) Manner of Sale; Expenses. — Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Application of Proceeds. — The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in the manner and under the restrictions, if any, that the Council of State may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

Any additional moneys which may be received by means of a grant or grants from the United States or any agency or department thereof or from any other source to aid in financing the cost of a capital facility may be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

(e) Notes; Repayment. — By and with the consent of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(1) For anticipating the sale of bonds, the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds.
(2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment or principal as they respectively become due.
(3) For the renewal of any loan evidenced by notes authorized in this Article.
(4) For the purposes authorized in this Article.
(5) For refunding bonds or notes as authorized in this Article.

Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which have been used in paying interest on or principal of the bonds.

(f) Refunding Bonds and Notes. — By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes for the purpose of refunding bonds or notes issued pursuant to this Article and to pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

(g) University Improvement Bonds Fund. — The proceeds of university improvement general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "University Improvement Bonds Fund". Moneys in the University Improvement Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any university improvements authorized by this Article may be placed by the State Treasurer in the University Improvement Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act [the Michael K. Hooker Higher Education Facilities Financing Act, S. L. 2000-3].

The proceeds of university improvement general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of university improvements, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of university improvement bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for university improvements shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. (2000-3, s. 1.2.)

Editor's Note. — As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under § 116D-1.

As to the authority of the Director of the Budget and of the General Assembly to use excess funds to meet increased costs of other capital facilities located at the same institution or to otherwise change allocations where to do so would be in the best interest of the State and the University, see the Editor's Note under § 116D-6.

The bracketed text in subsection (g) has been inserted at the direction of the Revisor of Statutes as it appears to be the intended reference.

§ 116D-12. Variable rate demand bonds and notes.

(a) In fixing the details of bonds and notes, the State Treasurer may provide that the bonds and notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner, if a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Bear interest at rates that may vary from any periods of time, as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, any variations as may be permitted pursuant to a par formula.

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

(b) If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium, or for any other reason, then the amount of authorized but unissued bonds or notes during the term of the credit facility shall not be less than the amount of the excess, unless the payment of the excess is otherwise provided for by agreement of the State executed by the State Treasurer. (2000-3, s. 1.2.)

§ 116D-13. Other agreements.

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with the issuance of bonds or notes. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, and bond attorneys to be associated with any bond issue under this Article as the State Treasurer considers necessary. (2000-3, s. 1.2.)

§§ 116D-14 through 116D-20: Reserved for future codification purposes.

Article 3.

Special Obligation Bonds for Improvements to the Facilities of The University of North Carolina.

§ 116D-21. Purpose.

The purpose of this Article is to authorize the Board of Governors of The University of North Carolina to issue special obligation bonds, payable from obligated resources, but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision of the State, to pay the cost, in whole or in part, of improvements to the facilities of the University. (2000-3, s. 1.2.)

Editor's Note. — Session Laws 2000-3, s. 11, made this Article effective May 25, 2000.

As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under § 116D-1.

§ 116D-22. Definitions.

The following definitions apply in this Article:

(1) Existing facilities. — Buildings and facilities then existing that generate income or receipts to the Board of Governors that are pledged, under the provisions of a resolution authorizing the issuance of the special obligation bonds under this Article, to the payment of the bonds.

(2) Institution. — Each of the institutions enumerated in G.S. 116-2, and any affiliated institutions of the University, including, without limitation, the University of North Carolina Center for Public Television, the University of North Carolina Health Care System, the North Carolina School of Science and Mathematics, and the North Carolina Arboretum.

(3) Obligated resources. — Any sources of income or receipts of the Board of Governors or the institution at which a special obligation bond project is or will be located that are designated by the Board as the security and source of payment for bonds issued under this Article to finance a special obligation bond project, including, without limitation, any of the following:

a. Rents, charges, or fees to be derived by the Board of Governors or the institution from any activities conducted at the institution.

b. Earnings on the investment of the endowment fund of the institution at which a special obligation project will be located, to the extent that the use of the earnings will not violate any lawful condition placed by the donor upon the part of the endowment fund that generates the investment earnings.

c. Funds to be received under a contract or a grant agreement, including "overhead costs reimbursement" under a grant agreement, entered into by the Board of Governors or the institution to the extent the use of the funds is not restricted by the terms of the contract or grant agreement or the use of the funds as provided in this Article does not violate the restriction.

Obligated resources do not include funds appropriated to the Board of Governors or the institution from the General Fund by the General Assembly from funds derived from general tax and other revenues of the State, and obligated resources do not include tuition payment by students.

(4) Special obligation bonds. — Bonds issued under this Article to finance the cost of a special obligation project, which bonds are secured by and payable from obligated resources designated by the Board of Governors at the time the issuance of the bonds is authorized in accordance with this Article.

(5) Special obligation bond project. — Any capital facilities located or to be located at an institution for the purpose of carrying out the mission of that institution and designated specifically by the Board of Governors as a "special obligation bond project" for purposes of this Article. A

special obligation bond project need not necessarily consist of buildings or facilities that are expected to generate "self-liquidating revenues" to the Board of Governors or the institution from direct rentals, charges, or fees from the services provided by the building or facility, and may include facilities such as classroom buildings, administration buildings, research facilities, libraries, and equipment that do not produce direct, or indirect, income to the Board of Governors or the institution. (2000-3, s. 1.2.)

§ 116D-23. Credit and taxing power of State not pledged; statement on face of bonds.

Special obligation bonds issued under this Article shall not constitute a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or of any political subdivision of the State. Special obligation bonds shall be secured solely by the obligated resources pledged to their payment. All of the special obligation bonds shall contain on their face a statement to the effect that neither the State nor the Board of Governors is obligated to pay the bonds or the interest on the bonds except from the obligated resources pledged for payment and that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality of the State is pledged to the payment of the principal of or the interest on the bonds. The issuance of special obligation bonds under this Article does not directly or indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes for the bonds. (2000-3, s. 1.2.)

§ 116D-24. General powers of Board of Governors.

The Board of Governors is authorized, subject to the requirements of this Article, to do all of the following:

(1) Determine the location and character of any special obligation bond project, to acquire, construct, and provide the project, and to maintain, repair, and operate and enter into contracts for the management, lease, use, or operation of all or any portion of any special obligation bond project and any existing facilities.

(2) Issue special obligation bonds to pay all or any part of the cost of a special obligation bond project, and to fund or refund any bonds previously issued by the Board of Governors to finance facilities designated as a special obligation bond project.

(3) Fix and revise from time to time and charge and collect fees, rates, rents, charges, and other income for the use of and for the services furnished by the institution that are designated as obligated resources in connection with a special obligation bond issue.

(4) Establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules for the use of and services rendered by the institution of the income or receipts to be obtained from the use or services designated as obligated resources in connection with a special obligation bond issue.

(5) Acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties and to lease all or any part of a special obligation bond project and any existing facilities for any periods of years, not exceeding 40 years, upon any terms and conditions as the Board of Governors determines, subject to the provisions of G.S. 143-341.

(6) Employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and any other employees and agents as may be necessary in its judgment in connection with a special obligation bond project and existing facilities, and to fix their compensation.
(7) Enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article.
(8) Receive and accept from any federal, State, or other public agency and any private agency, person, or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for a special obligation bond project or any other services provided by the institution that is designated as the obligated resource in connection with a special obligation bond issue, and to agree to apply and use them in accordance with the terms and conditions under which they are provided.
(9) Do all acts and things necessary or convenient to carry out the powers granted by this Article. (2000-3, s. 1.2.)

§ 116D-25. Consultation with the Joint Legislative Commission on Governmental Operations.

Whenever this Article requires the approval of the Director of the Budget of an action, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations before giving approval. (2000-3, s. 1.2.)

§ 116D-26. Issuance of special obligation bonds and bond anticipation notes.

(a) Authority. — The Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing a special obligation project. Before issuing special obligation bonds, the Board of Governors shall first adopt a resolution (i) setting forth the designation by the Board of Governors that the buildings or facilities to be financed by the bond issue are the special obligation bond project being financed and (ii) designating the obligated resources that will secure and be the source of payment of the special obligation bonds to be issued. The Board of Governors shall not issue any special obligation bonds unless the Board of Governors finds that sufficient obligated resources are reasonably expected to be available (i) to pay the principal and interest on the special obligation bonds proposed to be issued, (ii) to create and maintain any reserves for the payment of the special obligation bonds, to the extent the Board of Governors is required to maintain reserves for this purpose by the terms of the trust agreement or resolution authorizing the issuance of the special obligation bonds, and (iii) to provide for the maintenance and operation of the facilities that are to generate the obligated resources to the extent the Board of Governors is required to maintain those facilities by the terms of the trust agreement or resolution authorizing the issuance of the special obligation bonds. Notwithstanding any other provision of this Article, the proceeds of special obligation bonds to be secured by obligated resources derived from the operation of or activities at one institution may not be applied to finance a special obligation project to be located at another institution.

(b) Approval Required. — The Board of Governors shall not issue any special obligation bonds for a project at an institution unless the board of trustees of that institution has approved the issuance of bonds for that project. The Board of Governors shall not issue special obligation bonds under this Article until the effective date of legislation enacted by the General Assembly authorizing the undertaking of the special obligation bond project to be financed and fixing the maximum aggregate principal amount of special obligation bonds that shall be issued for that purpose. In submitting proposed special obligation bond projects to the General Assembly for approval, the Board of Governors shall submit information on the need for each project, project costs, estimates of increased operating costs upon completion, estimated debt service requirements, and the sources and amounts of obligated resources to be pledged for the repayment of the bonds. If the obligated resources to repay the bonds or to operate the proposed project potentially involve increased costs to students or to the General Fund, these costs shall be identified in the Board of Governors' submission.

Except as provided in this Article, special obligation bond projects may be undertaken, special obligation bonds may be issued, and other powers vested in the Board of Governors under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions, or things which are specifically required by this Article.

(c) Term; Form. — The special obligation bonds of each issue shall be dated, shall mature at any times not exceeding 25 years from their dates, shall bear interest at any rates as may be determined by the Board of Governors, and may be redeemable before maturity at the option of the Board, at any prices and under any terms and conditions as may be fixed by the Board prior to the issuance of the special obligation bonds. The Board of Governors shall determine the form and manner of execution of the special obligation bonds and shall fix the denominations of the special obligation bonds and the places of payment of principal and interest, which may be at any bank or trust company within or without the State. Notwithstanding any of the other provisions of this Article or any recitals in any special obligation bonds issued under the provisions of this Article, all special obligation bonds shall be negotiable instruments under the laws of this State, subject only to the provisions for registration in a resolution authorizing the issuance of the special obligation bonds or a trust agreement securing the bonds. The Board of Governors may sell the special obligation bonds in any manner, at public or private sale, and for any price, as it may determine to be for its best interests.

(d) Proceeds; Additional Bonds. — The proceeds of the special obligation bonds of each issue shall be used solely for the purpose for which the bonds have been authorized and shall be disbursed in the manner and under such restrictions, if any, as the Board of Governors may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing them. Unless otherwise provided in the authorizing resolution or in the trust agreement securing the special obligation bonds, if the proceeds of the special obligation bonds, by error of estimates or otherwise, are less than the cost of the special obligation bond project, additional bonds may in like manner be issued to provide the amount of the deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of special obligation bonds, and any trust agreement securing them, may also contain limitations upon the issuance of additional special obligation bonds as the Board of Governors considers proper, and the additional special obligation bonds must be issued under the restrictions and limitations prescribed by the resolution or trust agreement.

(e) Temporary Bonds; Notes. — Before preparing definitive bonds, the Board of Governors may, under like restrictions, issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which become mutilated, destroyed, or lost.

The Board of Governors may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing special obligation bonds for the financing of special obligation bond projects covered under this Article. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of the special obligation bonds.

(f) Bond Anticipation Notes. — The Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, bond anticipation notes of the Board of Governors in anticipation of the issuance of special obligation bonds authorized by this Article. The principal of and the interest on these notes shall be payable solely from the proceeds of special obligation bonds or renewal notes or, in the event bond or renewal note proceeds are not available, from the obligated resources designated for their payment. The notes of each issue shall be dated, shall mature at any times not exceeding two years from their dates, shall bear interest at any rates as may be determined by the Board of Governors, and may be redeemable before maturity, at the option of the Board of Governors, at any prices and under any terms and conditions as may be fixed by the Board of Governors prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes and shall fix the denominations of the notes and the places of payment of principal and interest, which may be at any bank or trust company within or without the State. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all notes shall be negotiable instruments under the laws of this State, subject only to the provisions for registration in a resolution authorizing the issuance of the notes or any trust agreement securing the bonds in anticipation of which the notes are being issued. The Board of Governors may sell the notes in any manner, at public or private sale, and for any price, as it may determine to be for its best interests.

The proceeds of the notes of each issue shall be used solely for the purpose for which the special obligation bonds in anticipation of which the notes are being issued have been authorized, and the note proceeds shall be disbursed in any manner and under any restrictions as the Board of Governors may provide in the resolution authorizing the issuance of the notes or bonds or in the trust agreement securing the special obligation bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the special obligation bonds in anticipation of which the notes are being authorized, may also contain limitations upon the issuance of additional notes as the Board of Governors considers proper, and such additional notes shall be issued under the restrictions and limitations prescribed by the resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated, destroyed, or lost.

Except as provided in this Article, notes may be issued under this Article and other powers vested in the Board of Governors under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

Unless the context indicates otherwise, the word "bonds", wherever used in this Article, include the words "bond anticipation notes." (2000-3, s. 1.2.)

§ 116D-27. Trust agreement; money received deemed trust funds; insurance; remedies.

(a) Trust Agreement Securing Bonds. — In the discretion of the Board of Governors and subject to the approval of the Director of the Budget, any special obligation bonds issued under this Article may be secured by a trust agreement by and between the Board of Governors and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The trust agreement or the resolution providing for the issuance of special obligation bonds may pledge or assign the obligated resources designated as security for the special obligation bonds, but shall not convey or mortgage any property of the institution. The trust agreement or resolution providing for the issuance of special obligation bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of the special obligation bonds that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board of Governors in relation to the acquisition, construction, or provision of any of the charging and collecting of any rates, fees, or charges that have been designated as obligated resources, the maintenance, repair, operation, and insurance of any property of the institution, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of special obligation bonds or funds securing special obligation bonds to furnish any indemnifying bonds or to pledge any securities as may be required by the Board of Governors. A trust agreement or resolution may set forth the rights and remedies of the holders of the special obligation bonds and the rights, remedies, and immunities of the trustee or trustees, if any, and may restrict the individual right of action by the holders. In addition to the foregoing, a trust agreement or resolution may contain other provisions the Board of Governors considers reasonable and proper for the security of the holders. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be treated as a part of the cost of the special obligation bond projects for which the special obligation bonds are issued or as an expense of operation of the special obligation bond project.

(b) Trust Funds. — All moneys received pursuant to the authority of this Article, whether as proceeds from the sale of bonds, or as obligated resources, are trust funds to be held and applied solely as provided in this Article. The Board of Governors may provide for the payment of all or part of the proceeds of the sale of the special obligation bonds and the obligated resources to any officer, board, or depositary that it may designate for their custody, and may provide for their method of disbursement, with any safeguards and restrictions it may determine. Any officer with whom, or any bank or trust company with which, moneys are deposited shall act as trustee of the moneys and shall hold and apply them for the purposes of this Article, subject to any requirements provided in this Article and in the resolution or trust agreement, authorizing or securing the special obligation bonds.

(c) Insurance. — Notwithstanding the provisions of any other law, the Board of Governors may carry insurance on any special obligation bond projects and any existing facilities in any amounts and covering any risks it considers advisable.

(d) Remedies. — Any holder of special obligation bonds issued under this Article and the trustees under a trust agreement, except to the extent the rights given in this section may be restricted by the trust agreement or the resolution authorizing the issuance of the special obligation bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State or granted under this Article or under the trust agreement or resolution, and may enforce and compel the performance of all duties required by this Article or by the trust agreement or resolution to be performed by the Board of Governors or by any of its officers, including the fixing, charging, and collecting of obligated resources. (2000-3, s. 1.2.)

§ 116D-28. Fixing and collecting obligated resources.

(a) Board to Provide Sufficient Resources. — For the purpose of aiding in the financing of a special obligation bond project and to provide security to the owners of the special obligation bonds issued to finance the special obligation bond project, the Board of Governors is authorized, to the extent the generation of the obligated resources is in the control of the Board, to fix, revise from time to time, charge, and collect the rents, charges, fees, or other revenues constituting the obligated resources. Fees and other revenue sources constituting obligated resources may be imposed or increased only with the approval of the Board of Governors. As long as any special obligation bonds issued under this Article and payable from those obligated resources are outstanding, the obligated resources, to the extent within the control of the Board of Governors, shall be so fixed and adjusted, with relation to other funds available, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing the special obligation bonds and at least sufficient to pay the principal of and the interest on the special obligation bonds as they become due and payable, to assure the continued collection of the obligated resources, and to create and maintain reserves for these purposes. A sufficient amount of the obligated resources, except any part that may be necessary to pay the cost of maintenance, repair, and operation, and to provide reserves for these purposes and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of the special obligation bonds or in the trust agreement securing the same, shall be set aside at regular intervals as may be provided in the resolution or trust agreement authorizing the issuance of the special obligation bonds in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on the special obligation bonds as they become due and the redemption price or the purchase price of special obligation bonds retired by call or purchase as provided in the resolution or trust agreement. This pledge shall be valid and binding from the time it is made, the obligated resources so pledged and thereafter received by the Board of Governors shall immediately be subject to the lien of the pledge without any physical delivery of the pledge or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Board of Governors, irrespective of whether the parties have notice of the pledge. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board of Governors. The use and disposition of moneys to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of the special obligation bonds or of the trust agreement securing the bonds.

(b) State Pledge. — The State pledges to, and agrees with, the holders of any special obligation bonds or notes issued by the Board of Governors pursuant to this Article that as long as any of the special obligation bonds or notes are outstanding and unpaid, the State will not limit or alter the rights vested in the Board of Governors at the time of issuance of the special obligation bonds or notes to set the terms and conditions of the special obligation bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the special obligation bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders are fully paid, met, and discharged. (2000-3, s. 1.2.)

§ 116D-29. Vesting powers in committee.

The Board of Governors may authorize its budget and finance committee to sell any special obligation bonds which the Board has, with the approval of the Director of the Budget, authorized to be issued under this Article in any manner and under any limitations or conditions as the Board prescribes and to perform other functions under this Article the Board determines. (2000-3, s. 1.2.)

§ 116D-30. Refunding bonds.

The Board of Governors may, subject to the approval of the Director of the Budget, issue from time to time refunding bonds for the purpose of refunding any bonds by the Board under this Article or under any Article of Chapter 116 of the General Statutes, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds refunded. The Board of Governors is further authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding bonds for the combined purpose of (i) refunding any bonds issued by the Board under this Article or under any Article of Chapter 116 of the General Statutes, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds, and (ii) paying all or any part of the cost of acquiring or constructing any additional special obligation bond projects.

This Article, as applicable, governs the issuance of refunding bonds, their maturities and other details, the rights and remedies of their holders, and the rights, powers, privileges, duties, and obligations of the Board of Governors with respect to them. (2000-3, s. 1.2.)

§ 116D-31. Additional and alternative method.

This Article provides an additional and alternative method for the doing of the things authorized and is supplemental and additional to powers conferred by other laws, including G.S. 116-175 to G.S. 116-185, inclusive and G.S. 116-197 and G.S. 116-198, and is not in derogation of or repealing any powers now existing under any other law, whether general, special, or local. The issuance of special obligation bonds or refunding bonds under this Article, however, need not comply with the requirements of any other law applicable to the issuance of bonds. (2000-3, s. 1.2.)

§§ 116D-32 through 116D-40: Reserved for future codification purposes.

Article 4.

Community Colleges Facilities General Obligation Finance Act.

§ 116D-41. Short title.

This Article may be cited as the Community College Facilities General Obligation Finance Act. (2000-3, s. 1.2.)

Editor's Note. — Session Laws 2000-3, s. 11, made this Article effective May 25, 2000.

As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under § 116D-1.

Session Laws 2000-3, s. 3(a), provides that the proceeds of community college general obligation bonds and notes, including any premium thereon, except the proceeds of community college general obligation bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, are to be allocated and expended for paying the cost of community college capital facilities, to the extent and as provided in Article 4 of Chapter 116D of the General Statutes, as enacted by the act and subject to change as provided in the act, and sets out a schedule of allocations for new construction and repair and renovations for each community college, campus, and center.

Session Laws 2000-3, s. 3(b) provides: "Except as provided in this subsection, a community college may use the bond proceeds allocated in subsection (a) of this section for repair and renovation only in accordance with the repair and renovation formula adopted by the State Board of Community Colleges in May 1998, as supplemented by additional repair and renovation needs determined by the State Board of Community Colleges as of April 2000. The following provisions govern reallocations:

"(1) New Construction. — Except as provided in this paragraph, new construction funds allocated in this section to a specific site may not be allocated to another site. If the local board of trustees of a community college determines that new construction funds allocated to a specific site are not needed at that site, the board may request that the State Board of Community Colleges reallocate those funds for new construction at another site of the community college. Except in the case of Mayland Community College, the funds may not be reallocated from a site outside the main campus county to a site within the main campus county. If the State Board of Community Colleges determines that the funds are not needed for new construction at the site for which they were originally allocated, it shall approve the reallocation to the other site and shall substitute the proposed facility at the other site in the Community Colleges System Office's application to the State Treasurer pursuant to G.S. 116D-43.

"Each community college shall submit to the State Board of Community Colleges a statement (i) proposing the capital facilities to be financed with the proceeds of community college general obligation bonds allocated to that community college, (ii) certifying that the proposed site is included in the allocations in this section or is a substitute facility at another site because the funds are not needed for new construction at the site for which they are allocated in this section, (iii) certifying that the community college is prepared to proceed with the construction, acquisition, or improvement of the proposed capital facilities, and (iv) demonstrating that the applicable matching requirements have been or will be met.

"Upon receipt by the State Board of Community Colleges of the information set forth above, the Board shall add the proposed capital facilities to the next application of the Community Colleges System Office to the State Treasurer to issue bonds pursuant to G.S. 116D-43.

"The board of trustees of an individual community college may use funds allocated for new construction either for new construction or for repair and renovations.

"(2) Repair and Renovations. — The board of trustees of a community college may use funds allocated for repair and renovations only for repair and renovations, and not for new construction. Funds allocated for repair and renovations shall be directed by the local board of trustees of a community college among the State Board approved sites of the community college on the basis of need, subject to approval by the State Board of Community Colleges.

"(3) Reallocation by General Assembly. — The projected allocations set forth above may be changed from time to time as the General Assembly may decide."

Session Laws 2000-3, s. 3(c), provides: "The match requirements of Chapter 115D of the

General Statutes apply to bond proceeds allocated in this section for new construction except as provided in this subsection. The consultant hired by the State Board of Community Colleges to determine funding formulas for the community college system developed an index to measure each county's ability to pay. The consultant found that some counties are unable to meet their local match requirement under Chapter 115D of the General Statutes because of inability to pay. The consultant recommended applying the "ability to pay" index to generate an adjusted matching rate. Accordingly, community colleges are required to match bond proceeds allocated for new construction in this section only as follows: Community colleges assigned an adjusted matching rate of less than forty percent (40%) in the ability to pay portion of the formula adopted by the State Board of Community Colleges in March 2000 are not required to match, and community colleges assigned an adjusted matching rate of forty percent (40%) or more in the ability to pay portion of the formula are required to match only at the assigned rate."

Session Laws 2000-3, s. 3(d), provides: "If the State Board of Community Colleges determines that a community college has not met its matching requirements by July 1, 2006, with respect to a capital improvement project for which bond proceeds are allocated in this act, the Board shall certify that fact to the State Treasurer by October 1, 2006. All of these bond proceeds with respect to which the Board certifies that the matching requirement has not been met by July 1, 2006, shall be placed by the State Treasurer in a special account within the Community Colleges Bond Fund and shall be used for making grants to community colleges. Bond proceeds in the special account shall be allocated among the community colleges in accordance with the following conditions:

"(1) The State Board of Community Colleges shall generate, by October 1, 2006, a priority ranking of legitimate community college capital improvement needs using a formula based on objective meaningful factors relevant to capital needs, including actual and projected enrollment, space requirements, current capacity, construction costs, and any other factors the State Board considers relevant.

"(2) The State Board of Community Colleges shall provide the State Treasurer a projected allocation of the proceeds in the special account in accordance with this priority ranking, except that:

"a. No projected allocation shall be made for a community college that the Board certified in accordance with this subsection had failed to meet a matching requirement.

"b. No more than four million dollars ($4,000,000) shall be allocated to a single community college.

"c. Funds shall not be allocated for more than one project per community college.

"(3) The proceeds of grants made from bond proceeds in the special account shall be allocated and expended for paying the cost of community college capital improvements in accordance with this allocation by the State Board of Community Colleges, to the extent and as provided in this act. The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section. The Director of the Budget shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes."

Session Laws 2000-3, s. 3(e), designates the North Carolina Center for Applied Technology as a community college with a matching rate of less than forty percent (40%), for the purposes of the act.

Session Laws 2000-3, s. 3(f), provides that, notwithstanding G.S. 143-341(3)a.2., G.S. 143-341(3) applies only to funds provided by this act for construction or renovation of community college buildings requiring an estimated expenditure of more than two hundred fifty thousand dollars ($250,000).

Session Laws 2000-3, s. 3(g), provides that the validity of community college general obligation bonds and notes issued under Article 4 of Chapter 116D of the General Statutes, as enacted by the act, is not affected by any subsequent adjustment of allocations or matching requirements provided in the act, or by any failure to comply with matching requirements or reporting requirements provided in the act.

§ 116D-42. Definitions.

The following definitions apply in this Article:

(1) Bonds. — Bonds authorized to be issued under this Article, including refunding bonds.

(2) Community college. — Defined in G.S. 115D-2.

(3) Community college general obligation bonds. — Bonds authorized to be issued under this Article, including refunding bonds.
(4) Community Colleges System Office. — The North Carolina Community Colleges System Office, created by Article 1 of Chapter 115D of the General Statutes, or if the Community Colleges System Office is abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers, and duties given by this Article to the Community Colleges System Office.
(5) Notes. — Notes issued under this Article. (2000-3, s. 1.2.)

§ 116D-43. Authorization of bonds and notes.

Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing community college general obligation bonds in the election held as provided by law, and upon the application of the Community Colleges System Office, the State Treasurer may, by and with the consent of the Council of State, issue and sell, at one time or from time to time, community college general obligation bonds of the State to be designated "State of North Carolina Community College General Obligation Bonds', with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State. Except as otherwise provided by this Article, the aggregate amount of bonds and notes issued pursuant to this Article shall not exceed six hundred million dollars ($600,000,000). The bonds and notes shall be issued in the following years up to the following amounts:

Fiscal Year	Aggregate Amount
2000-2001	$ 48,400,000
2001-2002	58,100,000
2002-2003	116,100,000
2003-2004	116,100,000
2004-2005	135,500,000
2005-2006	125,800,000

If less than the aggregate amount of bonds or notes authorized to be issued in a fiscal year is issued in that fiscal year, the balance for that fiscal year may be issued in any subsequent fiscal year. Refunding bonds and notes issued pursuant to G.S. 116D-46(f) shall not be included in the limitation on the aggregate amount of bonds and notes that may be issued pursuant to this Article.

The proceeds of bonds or notes issued under this Article shall be applied to finance the cost of grants to be made by the State to community colleges to finance the cost of capital facilities for the community college or to refund any outstanding bonds or notes issued under this Article. The capital facilities to be improved, constructed, or acquired with the proceeds of bonds or notes shall be determined as provided in G.S. 116D-44. (2000-3, s. 1.2.)

Editor's Note. — As to the purpose and interpretation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under § 116D-1.

§ 116D-44. Designation of capital facilities and preconditions to bond issuance.

The capital facilities to be financed in whole or in part with the proceeds of community college general obligation bonds shall be described in legislation enacted from time to time by the General Assembly. This legislation shall also provide for voter approval of the bonds to finance the capital facilities and shall become effective only upon approval by the voters. The proceeds of community college general obligation bonds shall not be expended to pay the costs of any capital facilities other than those described in that legislation. (2000-3, s. 1.2.)

§ 116D-45. Faith and credit.

The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. The State retains the right to amend any provision of this Article to the extent it does not impair any contractual right of a bond owner. (2000-3, s. 1.2.)

§ 116D-46. Issuance of bonds and notes.

(a) Terms and Conditions. — Bonds or notes may bear any dates, may be serial or term bonds or notes, or any combination of these, may mature in any amounts and at any times, not exceeding 25 years from their dates, may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts, may bear interest at any rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. — Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile of the Seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this Article.

(c) Manner of Sale; Expenses. — Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Application of Proceeds. — The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in the manner and under the restrictions, if any, that the Council of State may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

Any additional moneys which may be received by means of a grant or grants from the United States or any agency or department thereof or from any other source to aid in financing the cost of a capital facility may be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

(e) Notes; Repayment. — By and with the consent of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(1) For anticipating the sale of bonds the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds.
(2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment or principal as they respectively become due.
(3) For the renewal of any loan evidenced by notes authorized in this Article.
(4) For the purposes authorized in this Article.
(5) For refunding bonds or notes as authorized in this Article.

Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which have been used in paying interest on or principal of the bonds.

(f) Refunding Bonds and Notes. — By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes for the purpose of refunding bonds or notes issued pursuant to this Article and to pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

(g) Community College Bonds Fund. — The proceeds of community college general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Community College Bonds Fund". Moneys in the Community College Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any community college capital facilities authorized by this Article may be placed by the State Treasurer in the Community College Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act [the Michael K. Hooker Higher Education Facilities Financing Act, S. L. 2000-3].

The proceeds of community college general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of grants to community colleges for capital facilities, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of community college bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for grants to community colleges shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. (2000-3, s. 1.2.)

Editor's Note. — The bracketed text in subsection (g) has been inserted at the direction of the Revisor of Statutes as it appears to be the intended reference.

§ 116D-47. Variable rate demand bonds and notes.

(a) In fixing the details of bonds and notes, the State Treasurer may provide that the bonds and notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner, if a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Bear interest at rates that may vary from any periods of time, as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, any variations as may be permitted pursuant to a par formula.

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

(b) If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium, or for any other reason, then the amount of authorized but unissued bonds or notes during the term of the credit facility shall not be less than the amount of the excess, unless the payment of the excess is otherwise provided for by agreement of the State executed by the State Treasurer. (2000-3, s. 1.2.)

§ 116D-48. Other agreements.

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with the issuance of bonds or notes. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, and bond attorneys to be associated with any bond issue under this Article as the State Treasurer considers necessary. (2000-3, s. 1.2.)

§ 116D-49. Procurement of capital facilities.

Any laws, rules, or regulations of the State that relate to the acquisition and construction of capital facilities shall apply to the capital facilities financed pursuant to this Article. (2000-3, s. 1.2.)

Chapter 117.

Electrification.

Article 2.

Electric Membership Corporations.

§ 117-17. General grant of powers.

OPINIONS OF ATTORNEY GENERAL

An EMC or Its Subsidiary May Not Engage in The Retail Distribution of Propane Gas. — Neither an Electric Membership Corporation (EMC) organized under Article 2 of Chapter 117 of the General Statutes nor a North Carolina wholly-owned subsidiary of an EMC, may indirectly, by participation in a joint venture with a third party, engage in the business of the retail distribution of propane gas in North Carolina. See opinion of Attorney General to Representative David M. Miner, 1998 N.C.A.G. 55 (12/14/98).

§ 117-18. Specific grant of powers.

OPINIONS OF ATTORNEY GENERAL

An EMC or Its Subsidiary May Not Engage in The Retail Distribution of Propane Gas. — Neither an Electric Membership Corporation (EMC) organized under Article 2 of Chapter 117 of the General Statutes nor a North Carolina wholly-owned subsidiary of an EMC, may indirectly, by participation in a joint venture with a third party, engage in the business of the retail distribution of propane gas in North Carolina. See opinion of Attorney General to Representative David M. Miner, 1998 N.C.A.G. 55 (12/14/98).

§ 117-25. Amendment of certificate of incorporation.

OPINIONS OF ATTORNEY GENERAL

An EMC or Its Subsidiary May Not Engage in The Retail Distribution of Propane Gas. — Neither an Electric Membership Corporation (EMC) organized under Article 2 of Chapter 117 of the General Statutes nor a North Carolina wholly-owned subsidiary of an EMC, may indirectly, by participation in a joint venture with a third party, engage in the business of the retail distribution of propane gas in North Carolina. See opinion of Attorney General to Representative David M. Miner, 1998 N.C.A.G. 55 (12/14/98).

Chapter 120.

General Assembly.

ARTICLE 1A.

Legislative Retirement System.

§ 120-4.22A. Post-retirement increases in allowances.

(a) Retired members and beneficiaries of the Retirement System shall receive post-retirement increases in allowances on the same basis as post-retirement increases in allowances are provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System.

(b) In accordance with subsection (a) of this section, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1986, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(d) In accordance with subsection (a) of this section, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1988, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(e) In accordance with subsection (a) of this section, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1989, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss).

(g) In accordance with subsection (a) of this section, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1992, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1992 and June 30, 1992.

(h) In accordance with subsection (a) of this section, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1993, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on January 1, 1993. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1993, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1993, and June 30, 1993.

(i) In accordance with subsection (a) of this section, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1994, shall be increased by three and one-half percent (3.5%) of the allowance payable on January 1, 1994. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1994, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1994, and June 30, 1994.

(j) In accordance with subsection (a) of this section, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1995, shall be increased by two percent (2%) of the allowance payable on January 1, 1995. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1995, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1995, and June 30, 1995.

(k) In accordance with subsection (a) of this section, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1996, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on January 1, 1996. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1996, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1996, and June 30, 1996.

(*l*) In accordance with subsection (a) of this section, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1997, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1997, but before June 30, 1997, shall be increased by a prorated amount of four (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1997, and June 30, 1997.

(m) In accordance with subsection (a) of this section, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1998, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1998, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1998, and June 30, 1998.

(n) In accordance with subsection (a) of this section, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1999, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1999, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1999, and June 30, 1999.

(o) In accordance with subsection (a) of this section, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2000, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2000, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2000, and June 30, 2000. (1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d); 1987 (Reg. Sess., 1988), c. 1086, s. 22(d); 1989, c. 752, s. 41(d); 1989 (Reg. Sess., 1990), c. 1077, s. 11; 1991 (Reg. Sess., 1992), c. 900, s. 53(d); 1993, c. 321, s. 74(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(k); 1995, c. 507, s. 7.22(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(c); 1997-443, s. 33.22(f); 1998-153, s. 21(c); 1999-237, s. 28.23(c); 2000-67, s. 26.20(f).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 26.20.(f), effective July 1, 2000, added subsection (o).

Article 2.

Duty and Privilege of Members.

§ 120-9. Freedom of speech.

The members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken. (1787, c. 277, s. 3, P.R.; R.C., c. 52, s. 29; Code, s. 2849; Rev., s. 4404; C.S., 6093; 1991 (Reg. Sess., 1992), c. 1037, s. 1; 2000-140, s. 28.)

Effect of Amendments. — Session Laws 2000-140, s. 28, effective July 21, 2000, substituted "speech" for "speech; protection from arrest" in the catchline.

Article 6B.

Legislative Research Commission.

§ 120-30.11. Time of appointments; terms of office.

Editor's Note. — Session Laws 2000-151, s. 6, directs the Legislative Research Commission to study the implementation of the act, which bans the introduction of new video gaming machines into the state, and to recommend any changes it deems necessary in order to strengthen the act. Notwithstanding G.S. 120-30.11, the Commission may make its report under this section to the 2001 General Assembly no later than April 1, 2001.

Article 6D.

Local Government Fiscal Information Act.

§ 120-30.45. Fiscal note on legislation.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law that could increase or decrease expenditures or revenues of a unit of local government shall have attached to it at the time of its consideration by the General Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed legislation. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar amount can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could increase or decrease expenditures or revenues of a unit of local government, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section.

(e) The Office of State Budget, Planning, and Management, the Department of Revenue, the Department of the State Treasurer, the Department of the State Auditor, the State department most directly concerned, and, where appropriate, officials of units of local government, upon the request of Fiscal Research Division, shall assist the Fiscal Research Division in the preparation of the fiscal note.

(f) Copies of fiscal notes prepared by the Fiscal Research Division shall be furnished to the sponsor of the bill or resolution, the chairmen of the Local Government Committees, and the chairmen of the Appropriations, Finance, Rules, or the Senate Ways and Means Committees as appropriate. (1979, 2nd Sess., c. 1262, s. 5; 1995, c. 415, s. 6; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (e).

§ 120-30.49. Compiling federal mandates; annual report.

(a) The Fiscal Research Division shall, in consultation with the appropriate staff of the Research and Bill Drafting Divisions, make an annual report to the General Assembly pertaining to the fiscal effect of federal mandates on, or federal law on which is conditioned the receipt of federal funds by the State and units of local government. The annual report on federal mandates shall include the following:

(1) A listing of federal laws that require the State and any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) An estimate of the amount of any increase or decrease in the costs to the State and units of local government in providing or delivering public services required by federal law that are funded in whole or in part by the State or units of local government; and

(3) A listing of any other federal actions directly affecting the expenditures or revenues of the State and units of local government.

(b) The Office of State Budget, Planning, and Management shall assist the Fiscal Research Division in the preparation of the annual report on federal mandates upon the request of the Division. Each State department, agency, or institution shall cooperate fully with the Fiscal Research Division in compiling the annual report on federal mandates and shall supply information to the Division in accordance with G.S. 120-32.01. The North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and units of local government shall cooperate with the Fiscal Research Division in compiling the annual report on federal mandates, as requested, by supplying information relevant to the expenditures or revenues of units of local government.

(c) Copies of the annual report on federal mandates to the State and units of local government shall be provided to members of the General Assembly and to the Governor, the Office of State Budget, Planning, and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. (1995, c. 415, s. 7; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsections (b) and (c).

Article 7.

Legislative Services Commission.

§ 120-32. Commission duties.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 26.9, effective July 1, 2000, provides that the Legislative Services Officer is to increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 1999-2000 by four and two-tenths percent (4.2%), and that nothing in the act limits any of the provisions of G.S. 120-32.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Article 7A.

Fiscal Research Division.

§ 120-36.8. Certification of legislation required by federal law.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds shall have attached to it at the time of its consideration by the General Assembly a certification prepared by the Fiscal Research Division, in consultation with the Bill Drafting and Research Divisions, identifying the federal law requiring passage of the bill or resolution. The certification shall contain a statement setting forth the reasons why the bill or resolution is required by federal law. If the bill or resolution is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the measure for which the certification is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for certification to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall consult with the Bill Drafting and Research Divisions, and may consult with the Office of State Budget, Planning, and Management or any State agency on preparation of the certification as promptly as possible. The Fiscal Research Division shall prepare the certification and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This certification shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a certification. A certification attached to a bill or resolution pursuant to this section is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a certification as provided in this section. (1995, c. 415, s. 8; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (b).

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 for a term of two years, subject to the condition that each officer shall serve at the pleasure of the house that elected him or her and until his or her successor is elected. The reading clerk and sergeant-at-arms of the Senate shall serve for terms of two years, subject to the condition that each serves at the pleasure of the Senate and until the officer's successor is elected. The reading clerk and sergeant-at-arms of the House of Representatives shall serve as provided in the rules of the House.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of two hundred eighty-six dollars($286.00) 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 entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of eighty-seven thousand six hundred eighty-one dollars ($87,681) 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; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189; 1985 (Reg. Sess., 1986), c. 1014, ss. 30, 31; 1987, c. 738, ss. 16, 17; 1987 (Reg. Sess., 1988), c. 1086, ss. 10, 11; c. 1100, s. 16(c); 1989, c. 752, ss. 27, 28; 1991, c. 756, s. 34; 1991 (Reg. Sess., 1992), c. 900, ss. 36, 37; 1993, c. 321, ss. 53, 54; 1993 (Reg. Sess., 1994), c. 769, ss. 7.6, 7.7; 1995, c. 507, ss. 7.9, 7.10; 1996, 2nd Ex. Sess., c. 18, ss. 28.8, 28.7; 1997-443, ss. 33.13, 33.14; 1998-153, ss. 10, 11; 1998-212, s. 28.7(a); 1999-237, ss. 28.7, 28.8; 2000-67, ss. 26.7, 26.8.)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, ss. 26.7 and 26.8, effective July 1, 2000, respectively, substituted "eighty-seven thousand six hundred eighty-one dollars ($87,681)" for "eighty four thousand one hundred forty-seven dollars ($84,147)" in subsection (c); and substituted "two hundred eighty-six dollars ($286.00)" for "two hundred seventy-four dollars ($274.00)" in subsection (b).

Article 12E.

Joint Legislative Transportation Oversight Committee.

§ 120-70.50. Creation and membership of Joint Legislative Transportation Oversight Committee.

Cross References. — As to periodic adjustment of permit fees to assure that revenue generated by the fees equals the cost of administration of Oversize/Overweight Permit Unit Program, see § 20-119(e).

Article 12H.

Joint Legislative Education Oversight Committee.

§ 120-70.81. Purpose and powers of Committee.

Cross References. — As to reports required from the Joint Legislative Education Oversight Committee to the General Assembly regarding capital facilities, see § 116-13.1(a)(3).

Article 16.

Legislative Appointments to Boards and Commissions.

§ 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

(1) The Board of Agriculture, as established by G.S. 106-2.

(1a) Not effectuated.

(1b) The Rules Review Commission as established by G.S. 143B-30.1.

(2) The Art Museum Building Commission, as established by G.S. 143B-59.

(3) The Governor's Advocacy Council for Persons with Disabilities, as established by G.S. 143B-403.2.

(3a) The State Banking Commission, as established by G.S. 53-92.

(4) The Board of Public Telecommunications Commissioners, as established by G.S. 143B-426.9.

(5) The Board of Transportation, as established by G.S. 143B-350.
(6) The Board of Trustees Teachers' and State Employees' Retirement System, as established by G.S. 135-6.
(6a) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1030, s. 33.
(7) The Coastal Resources Commission, as established by G.S. 113A-104.
(8) The Environmental Management Commission, as established by G.S. 143B-283.
(8a) The Genetic Engineering Review Board, as created by G.S. 106-769.
(9) The State Fire and Rescue Commission, as established by G.S. 58-78-1.
(10) The Public Officers and Employees Liability Insurance Commission, as established by G.S. 58-32-1.
(11) Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 4.
(12) Repealed by Session Laws 1987, c. 71, s. 4.
(13) The North Carolina Criminal Justice Education and Training Standards Commission, as established by G.S. 17C-3.
(14) The North Carolina Housing Finance Agency Board of Directors, as established by G.S. 122A-4.
(15) The North Carolina Seafood Industrial Park Authority, as established by G.S. 113-315.25.
(16) Repealed by Session Laws 1985, c. 479, s. 153(b).
(17) The Board of Trustees of the North Carolina School of Science and Mathematics, as established by G.S. 116-233.
(18) The North Carolina Board of Science and Technology, as established by G.S. 143B-426.30.
(19) Repealed by Session Laws 1989, c. 500, s. 107(b).
(20) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(a).
(21) The Board of Trustees of the University of North Carolina Center for Public Television, as established by G.S. 116-37.1.
(22) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, as established by G.S. 143B-147.
(23) Repealed by Session Laws 1993, c. 501, s. 12.
(24) The North Carolina Alcoholism Research Authority, as established by G.S. 122C-431.
(25) The North Carolina Ports Railway Commission, as established by G.S. 143B-469.
(25a) The North Carolina Global TransPark Authority as established under G.S. 63A-3.
(26) The North Carolina State Ports Authority, as established by G.S. 143B-452.
(27) The Property Tax Commission, as established by G.S. 105-288.
(28) The Social Services Commission, as established by G.S. 143B-154.
(29) The North Carolina State Commission of Indian Affairs, as established by G.S. 143B-407.
(30) The Wildlife Resources Commission, as established by G.S. 143-240.
(31) The North Carolina Council for Women, as established by G.S. 143B-393.
(31a) The North Carolina Structural Pest Control Committee, as established by G.S. 106-65.23.
(32) The Board of Trustees of North Carolina Museum of Art, established by G.S. 140-5.13.
(33) The North Carolina Sheriffs' Education and Training Standards Commission, established by G.S. 17E.
(33a) Repealed by Session Laws 1987, c. 738, s. 41(d).

(34) The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, as established by G.S. 143B-426.24.
(34a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(b).
(34b) The North Carolina Housing Partnership, as established by G.S. 122E-4.
(35) The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, as established by G.S. 135-39.
(36) The Milk Commission as established by G.S. 106-266.7.
(37) The State Board of Chiropractic Examiners as established by G.S. 90-139.
(38) The North Carolina Manufactured Housing Board, as established by G.S. 143-143.10.
(39) Repealed by Session Laws 1987, c. 71, s. 4.
(40) The Alarm System Licensing Board, as established by G.S. 74D-4.
(41) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1011, s. 2.1(c).
(42) The Crime Victims Compensation Commission, as established by G.S. 15B-3.
(43) The North Carolina Council on Ocean Affairs, as established by G.S. 143B-390.10.
(44) The Child Care Commission, as established by G.S. 143B-168.3.
(45) Repealed by Session Laws 1995, c. 517, s. 39, effective October 1, 1995.
(45a) The North Carolina Teaching Fellows Commission, as established by G.S. 115C-363.22.
(46) The Board of Directors of the North Carolina Arboretum, as established in G.S. 116-240.
(47) The North Carolina Agricultural Finance Authority, as established by G.S. 122D-4.
(48) Reserved for future codification purposes.
(49) The Northeastern North Carolina Farmers Market Commission as established by G.S. 106-720.
(50) The Southeastern North Carolina Farmers Market Commission as established by G.S. 106-727.
(50a) The North Carolina Board of Dietetics/Nutrition as created by Article 25 of Chapter 90 of the General Statutes.
(51) The State Building Commission, as established by G.S. 143-135.25.
(52) The Commission on School Facility Needs, established by G.S. 115C-489.4.
(53) **(Effective retroactively to September 1, 1997)** The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.51.
(54) The North Carolina Low-Level Radioactive Waste Management Authority, as established by G.S. 104G-5.
(55) Repealed by Session Laws 1998-217, s. 45, effective October 31, 1998.
(56) The North Carolina Hazardous Waste Management Commission, as established by G.S. 130B-6.
(57) The Information Resource Management Commission, as established by G.S. 143B-426.21.
(58) The Appraisal Board created in G.S. 93E-1-5.
(59) Repealed by Session Laws 1997-286, s. 7.
(59a) The North Carolina Principal Fellows Commission established by G.S. 116-74.41.
(60) Repealed by Session Laws 1997-443, s. 8.26b.
(61) The State Health Plan Purchasing Alliance Board, as established by G.S. 143-625.

(62) The Northeastern North Carolina Regional Economic Development Commission, as established by G.S. 158-8.2.
(63) The Teacher Academy Board of Trustees, as established by Section 17.9 of House Bill 229 of the 1995 General Assembly [G.S. 116-30.01].
(63a) The North Carolina Code Officials Qualification Board, as established by G.S. 143-151.9.
(64) A facility authority established under Part 4 of Article 20 of Chapter 160A of the General Statutes.
(64a) The North Carolina Educational Facilities Finance Agency, as established by G.S. 115E-4.
(65) Repealed by Session Laws 1998-217, s. 45, effective October 31, 1998.
(66) The Local Government Commission, as established by G.S. 159-3.
(67) The Board of Trustees of the Natural Heritage Trust Fund, as established by G.S. 113-77.8.
(68) The State Personnel Commission.
(69) The North Carolina Partnership for Children, Inc., established pursuant to Part 10B of Article 3 of Chapter 143B of the General Statutes, and all local partnerships established pursuant to this Part.
(70) The Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
(71) The Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.
(72) The North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes.
(73) **(Repealed effective December 1, 2003)** The North Carolina Rural Internet Access Authority created in Part 2E of Article 10 of Chapter 143B of the General Statutes.
(74) The North Carolina Respiratory Care Board as created by Article 37 of Chapter 90 of the General Statutes. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, ss. 2, 6; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479, s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c); 1985 (Reg. Sess., 1986), c. 1011, ss. 2, 2.1(c); c. 1014, ss. 63(h), 99; c. 1028, s. 33; c. 1029, s. 14.3; 1987, c. 71, ss. 4, 5; c. 622, s. 15; c. 641, s. 21; c. 738, s. 41(d); c. 765, s. 2; c. 841, s. 4; c. 850, s. 18; 1987 (Reg. Sess., 1988), c. 993, s. 27; 1989, c. 139, s. 2; c. 168, s. 8; c. 239, s. 7; c. 500, ss. 107(b), 109(g); c. 625, s. 24; c. 727, s. 140; c. 750, s. 4; c. 752, s. 148(c); 1989 (Reg. Sess., 1990), c. 827, s. 14; c. 1024, s. 23(a)-(d); c. 1074, s. 32(a)-(c); 1991, c. 134, s. 1; c. 301, s. 1; c. 668, s. 2; c. 749, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 14(f); c. 1007, s. 37; c. 1030, ss. 33, 51.14; c. 1044, s. 10(b); 1993, c. 321, ss. 85(d), 135(b), 309.1(b); c. 405, s. 18.1; c. 419, s. 13.1; c. 501, s. 12; c. 529, s. 3.9; 1993 (Reg. Sess., 1994), c. 777, s. 4(f); 1995, c. 324, s. 17.9(i); c. 458, s. 2; c. 490, ss. 12(b), 17(b), 21(b), 30(b), 37(b); c. 517, s. 39(d); 1997-286, s. 7; 1997-443, s. 8.26; 1997-506, s. 42; 1998-181, s. 3; 1998-212, s. 12.37B(e); 1998-217, s. 45; 1998-224, s. 19(c); 1998-225, s. 1.2; 2000-147, s. 5; 2000-148, s. 2; 2000-149, ss. 2, 5; 2000-162, s. 2.)

Editor's Note. —

The number of subdivision (72) was assigned by the Revisor of Statutes, the number in Session Laws 2000-148, s. 2, having been subdivision (70). The number of subdivision (73) was assigned by the Revisor of Statutes, the number in Session Laws 2000-149, s. 2, having been subdivision (71). The number of subdivision (74) was assigned by the Revisor of Statutes, the number in Session Laws 2000-162, § 2, having been subdivision (70).

Session Laws 2000-149, which added subdivision (73), provides in s. 5 that the act is effective August 2, 2000. The North Carolina

Rural Internet Access Authority created in the act is dissolved effective December 31, 2003. The act is repealed effective December 31, 2003. Part 2E of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(71) (now subdivision (73)), as enacted by this act, are repealed effective December 1, 2003.

Session Laws 2000-147, s. 8(a)-(c), provides:

"(a) Interpretation of Act. — The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

"(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

"(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-147, s. 8(d), contains a severability clause.

Effect of Amendments. —

Session Laws 2000-147, s. 5, effective August 2, 2000, added subdivisions (70) and (71).

Session Laws 2000-148, s. 2, effective July 1, 2000, added subdivision (72).

Session Laws 2000-149, s. 2, added subdivision (73). For effective date and postponed repeal of this subdivision, see the Editor's Note.

Session Laws 2000-162, s. 2, effective August 2, 2000, added subdivision (74).

ARTICLE 17.

Confidentiality of Legislative Communications.

§ 120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes.

(a) A request made to an employee of a State agency other than the General Assembly by an employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An employee of a State agency other than the General Assembly who receives such a request or who learns of such a request made to another employee of his or her agency shall reveal the existence of the request only to other employees of the agency to the extent that it is necessary to respond to the request, and to the employee's supervisor and to the Office of State Budget, Planning, and Management. All documents prepared by the employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(b) As used in this section, "employee" means an employee or officer of a State agency.

(c) Violation of this section may be grounds for disciplinary action. (1995, c. 324, s. 8.1(a); c. 507, s. 8.2; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (a).

ARTICLE 20.

Joint Legislative Commission on Municipal Incorporations.

Part 2. Procedure for Incorporation Review.

§ 120-166. Additional criteria; nearness to another municipality.

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget, Planning, and Management if the municipality was incorporated since the return of that census.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

(1) The proposed municipality is entirely on an island that the nearby city is not on;

(2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;

(3) The municipalities within the distances described in subsection (a) of this section by resolution express their approval of the incorporation; or

(4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 25; 1998-150, s. 2; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (a).

ARTICLE 24.

The Legislative Study Commission on Children and Youth.

§ 120-216. Commission duties.

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:

a. Determining the adequacy and appropriateness of services:

1. To children and youth receiving child welfare services;

2. To children and youth in the juvenile court system; and
3. Provided by the Division of Social Services and the Department of Juvenile Justice and Delinquency Prevention.

b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.

c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose. (1997-390, s. 11; 1997-443, s. 11A.118(b); 1999-423, s. 5; 2000-137, s. 4(u).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(u), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subdivision (1)a.3.

Article 26.

Joint Select Committee on Information Technology.

§ 120-230. Creation and purpose of the Joint Select Committee on Information Technology.

Editor's Note. —
Session Laws 1999-237, s. 22.2, as amended by Session Laws 2000-67, s. 20, directs the Joint Select Committee on Information Technology to study, evaluate and recommend changes in the current technological infrastructure of the Departments of the Secretary of State and State Treasurer. The Committee is to report by December 1, 2000, to the Senate and House Appropriations Committees.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§§ 120-236 through 120-239: Reserved for future codification purposes.

Article 27.

The Joint Legislative Oversight Committee On Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 120-240. Creation and membership of Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(a) Establishment; Definition. — There is established the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(b) Membership. — The Committee shall consist of 16 members, as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, as follows:
  a. At least two members of the Senate Committee on Appropriations.
  b. The chair of the Senate Appropriations Committee on Human Resources.
  c. At least two members of the minority party.

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, as follows:
  a. At least two members of the House of Representatives Committee on Appropriations.
  b. The cochairs of the House of Representatives Appropriations Subcommittee on Health and Human Services.
  c. At least two members of the minority party.

(c) Terms. — Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2001 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (2000-83, s. 2.)

Editor's Note. — Session Laws 2000-83, s. 1, provides:

"Findings. — The General Assembly finds that:

"(1) The State and local government entities are not using effectively and efficiently available resources to administer and provide mental health, developmental disabilities, and substance abuse services uniformly across the State.

"(2) Effective implementation of State policy to assist individuals with mental illness, developmental disabilities, and substance abuse problems requires that a standard system of services, designed to identify, assess, and meet client needs within available resources, be available in all regions of the State.

"(3) The findings of recent comprehensive independent studies, and recent federal court decisions, compel the State to consider significant changes in the operation and utilization of State psychiatric hospital services.

"(4) State and local government funds for mental health, developmental disabilities, and substance abuse services must be committed on a continuing, stabilized basis and will need to be increased over time to ensure that the purposes of mental health system reform are achieved.

"(5) Reform of the State mental health, developmental disabilities, and substance abuse services system is necessary and should begin immediately. Reform efforts should focus on correcting system inefficiencies, inequities in service availability, and deficiencies in funding and accountability, and on improving and enhancing services to North Carolina's citizens."

Session Laws 2000-83, s. 6, made this Article effective July 1, 2000.

Session Laws 2000-83, s. 3, provides:

"(a) Plan for Mental Health System Reform.

"Terms Defined. As used in this section, unless the context clearly provides otherwise:

"(1) "Committee" means the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

"(2) "Mental Health System Reform" includes the system of services for mental health, developmental disabilities, and substance abuse.

"(3) "Plan" means the Plan for Mental Health System Reform developed and recommended by the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

"(4) "State Auditor/PCG, Inc., Study" means the "Study of State Psychiatric Hospitals and Area Mental Health Programs, April 1, 2000", conducted by the Public Consulting Group, Inc., under coordination by and contract with the State Auditor.

"(b) Development of Plan for Mental Health System Reform. The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services established under Article 27 of Chapter 120 of the General Statutes shall develop a Plan for Mental Health System Reform. It is the intent of the General Assembly that the Plan shall be fully implemented not later than July 1, 2005.

"(c) Purpose and Content of the Plan. The Plan shall provide for systematic, phased-in implementation of changes to the State's mental health system. In developing the Plan, the Committee shall do the following:

"(1) Review and consider the findings and recommendations of the State Auditor/PCG, Inc., Study.

"(2) Report to the 2001 General Assembly upon its convening the changes that should be made to the governance, structure, and financing of the State's mental health system at the State and local levels. The report shall include:

"a. An explanation of how and the extent to which the proposed changes are in accord with or differ from the recommendations of the State Auditor/PCG, Inc., Study.

"b. Proposed time frames for implementing mental health system reform on a phased-in basis, and the recommended effective date for full implementation of all recommended changes.

"c. An estimate of the amount of State and federal funds necessary to implement the changes. The estimate should indicate costs of each phase of implementation and the total cost of full implementation.

"d. An estimate of the amount of savings in State funds expected to be realized from the changes. The estimate should show savings expected in each phase of implementation, and the total amount of savings expected to be realized from full implementation.

"e. The potential financial, economic, and social impact of changes to the current governance, structure, and financing of the mental health system on providers, clients, communities, and institutions at the State and local levels.

"f. Proposed legislation making the necessary amendments to the General Statutes to enact the recommended changes to the system of governance, structure, and financing.

"(3) Study the administration, financing, and delivery of developmental disabilities services. The study shall be in greater depth and detail than addressed in the State Auditor/PCG, Inc., Study. The Committee shall make a progress report on its study of developmental disabilities services to the 2001 General Assembly upon its convening.

"(4) Study the feasibility and impact of and best methods for downsizing of the State's four psychiatric hospitals. In conducting this study, the Committee shall:

"a. Take into account the need to enhance and improve community services to meet increased demand resulting from downsizing, and

"b. Consider the findings and recommendations of the MGT of America Report of 1998, as well as the State Auditor/PCG, Inc., Study.

"(5) Consider the impact of mental health system reform on quality of services and patient care and ensure that the Plan provides for ongoing review and improvements to quality of services and patient care.

"(6) Ensure that the Plan provides for the active involvement of consumers and families in mental health system reform and ongoing implementation.

"(7) Address the need to enhance and improve substance abuse services, including services for the prevention of substance abuse.

"(8) Recommend a mental health, developmental disabilities, and substance abuse services benefits package that will provide for basic benefits for these services as well as specific benefits for targeted populations.

"(9) Take into account the State's responsibility to enable institutionalized persons and persons at risk for institutionalization to receive services outside of the institution in community-based settings in accordance with the United States Supreme Court decision in Olmstead vs. L.C., (1999).

"(10) Identify and address issues pertaining to the administration and provision of mental health services to children.

"(11) Address issues, problems, strengths, and weaknesses in the current mental health system that are not addressed in the State Auditor/PCG, Inc., Study but that warrant consideration in the development of a reformed mental health system.

"(12) Consider whether the State shall implement a contested case hearings procedure for applicants and recipients of mental health, developmental disabilities, and substance abuse services.

"(d) Subcommittees. The Committee shall establish one or more subcommittees to consider and develop specific focus areas of the Plan. Each subcommittee shall be the working group for the focus area assigned by the Committee cochairs. The Committee cochairs shall appoint the cochairs and members of each subcommittee from the Committee membership. The Committee cochairs shall invite representatives from the following to participate as nonvoting members of each subcommittee:

"(1) Providers of mental health, developmental disabilities, substance abuse, long-term care, and other appropriate providers.

"(2) Consumers of mental health, developmental disabilities, and substance abuse services and family members of consumers of these services.

"(3) State and local government, including area mental health programs.

"(4) Business and industry.

"(5) Organizations that advocate for individuals in need of mental health, developmental disabilities, and substance abuse services.

"Subcommittees shall meet at the call of the subcommittee cochairs.

"The Committee cochairs shall assign the focus area for each subcommittee. Each subcommittee shall carry out its assignment as directed by the Committee cochairs and shall provide its findings and recommendations to the Committee cochairs for final decision by the Committee.

"(e) Reports. In addition to the report required under subsection (b) of this section, the Committee shall submit the following reports:

"(1) To the 2001 General Assembly, upon its convening:

"a. A progress report on the development of the Plan required by this section; and

"b. An outline of an implementation process for downsizing the four State psychiatric hospitals.

"(2) To the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Joint Appropriations Committees on Health and Human Services, by October 1, 2001, and March 1, 2002, progress reports on the development and implementation of the Plan.

"(3) Interim reports on the development and implementation of the Plan to:

"a. The 2001 General Assembly, by May 1, 2002. The report shall include legislative action necessary to continue the implementation of changes to the governance, structure, and financing of the State mental health system as recommended by the Committee in its January 2001 report to the General Assembly.

"b. The 2003 General Assembly, upon its convening.

"c. The 2003 General Assembly, by May 1, 2004. The report shall include legislative action necessary to continue phased-in implementation of the Plan.

"(4) To the 2005 General Assembly, upon its convening, a final report on the Plan for Mental Health System Reform."

Session Laws 2000-83, s. 4, directs the Speaker of the House of Representatives and the President Pro Tempore of the Senate to make appointments to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services established under the act no later than 30 days from the date of adjournment sine die of the 1999 General Assembly. The Committee is to convene its first meeting not later than 15 days after all members have been appointed.

Session Laws 2000-83, s. 5, directs the Department of Health and Human Services to report to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the status of the Department's reorganization efforts pertaining to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services on or before October 1, 2000, and on or before March 1, 2001. The report is to include efforts underway by the Department to better coordinate policy and administration of the Division of Medical Assistance with policy and administration of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 120-241. Purpose of Committee.

The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall examine, on a continuing basis, systemwide issues affecting the development, financing, administration, and delivery of mental health, developmental disabilities, and substance abuse services, including issues relating to the governance, accountability, and quality of services delivered. The Committee shall make ongoing recommendations to the General Assembly on ways to improve the quality and delivery of services and to maintain a high level of effectiveness and efficiency in system administration at the State and local levels. In conducting its examination, the Committee shall study the budget, programs, administrative organization, and policies of the Department of Health and Human Services to determine ways in which the General Assembly may encourage improvement in mental health, developmental disabilities, and substance abuse services provided to North Carolinians. (2000-83, s. 2.)

§ 120-242. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is eight members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (2000-83, s. 2.)

§§ 120-243 through 120-244: Reserved for future codification purposes.

Article 28.

Future of the North Carolina Railroad Study Commission.

§ 120-245. Commission Established.

There is established the Future of the North Carolina Railroad Study Commission. (1999-237, s. 27.25(a).)

Editor's Note. — Session Laws 1999-237, s. 27.25 (a)-(k) has been codified as Chapter 120, Article 28, §§ 120-245 through 120-255, at the direction of the Revisor of Statutes.

Section 30.5 of Session Laws 1999-237 makes this Article effective July 1, 1999.

§ 120-246. Membership.

The Commission shall be composed of 16 members as follows:

(1) Eight members of the House of Representatives appointed by the Speaker of the House.

(2) Eight members of the Senate appointed by the President Pro Tempore of the Senate.

Terms on the Commission are for two years and begin on January 15 of each odd-numbered year, except for the terms of the initial members, which begin on appointment. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Commission. (1999-237, s. 27.25(b); 2000-138, s. 8.1.)

Effect of Amendments. — Session Laws 2000-138, s. 8.1, effective July 1, 2000, amended this section by adding the last two sentences.

§ 120-247. Duties of the Commission.

The Commission shall study the following matters:

(1) The importance of railroads and railroad infrastructure improvements to economic development in North Carolina, including improvements to short line railroads.

(2) Issues important to the future of passenger and freight rail service in North Carolina.

(3) Methods to expedite property disputes between railroads and private landowners.

(4) All aspects of the operation, structure, management, and long-range plans of the North Carolina Railroad.

The Commission's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company. (1999-237, s. 27.25(c); 2000-138, s. 8.2; 2000-146, s. 12.)

Editor's Note. — Session Laws 2000-146, s. 12, effective on and after July 1, 1999, amended Session Laws 1999-237, s. 27.25(c), by rewriting subdivision (1). Session Laws 2000-146, s. 12, was repealed by Session Laws 2000-138, s. 8.2(a), effective July 1, 2000; s. 8.2(b) of Session Laws 2000-138 rewrote subdivision (1), making the same changes as had been made by Session Laws 2000-146, s. 12.

Effect of Amendments. — Session Laws 2000-138, s. 8.2(b), effective July 1, 2000, rewrote subdivision (1), and added subdivisions (3) and (4).

§ 120-248. Vacancies.

Any vacancy on the Commission shall be filled by the appointing authority. (1999-237, s. 27.25(d).)

§ 120-249. Cochairs.

Cochairs of the Commission shall be designated by the Speaker of the House of Representatives and the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon the call of the cochairs. (1999-237, s. 27.25(e).)

§ 120-250. Quorum.

A quorum of the Commission shall be nine members. (1999-237, s. 27.25(f).)

§ 120-251. Expenses of Members.

Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. (1999-237, s. 27.25(g).)

§ 120-252. Staff.

Adequate staff shall be provided to the Commission by the Legislative Services Office. (1999-237, s. 27.25(h).)

§ 120-253. Consultants.

The Commission may hire consultants to assist with the study. Before expending any funds for a consultant, the Commission shall report to the Joint Legislative Commission on Governmental Operations on the consultant selected, the work products to be provided by the consultant, and the cost of the contract, including an itemization of the cost components. (1999-237, s. 27.25(i).)

§ 120-254. Meeting Location.

The Legislative Services Commission shall grant adequate meeting space to the Commission in the State Legislative Building or the Legislative Office Building. (1999-237, s. 27.25(j).)

§ 120-255. Reports.

The Commission shall submit an annual report to the General Assembly on or before the convening of the regular session of the General Assembly each year. (1999-237, s. 27.25(k); 2000-138, s. 8.3; 2000-146, s. 13.)

Editor's Note. — Session Laws 2000-146, s. 13, effective on and after July 1, 1999, amended Session Laws 1999-237, s. 27.25(k), by requiring the Commission to submit a final report to the General Assembly by January 15, 2001. Session Laws 2000-146, s. 13, was repealed by Session Laws 2000-138, s. 8.3(a), effective July 1, 2000.

Effect of Amendments. — Session Laws 2000-138, s. 8.3(b), effective July 1, 2000, rewrote the section, deleting the termination provision and requiring an annual report.

Chapter 121.

Archives and History.

Article 3.

Salvage of Abandoned Shipwrecks and Other Underwater Archaeological Sites.

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

Cross References. — As to establishment of a pilot program for the removal of abandoned vessels in the Neuse River Basin, see the editor's note at § 76-40.

Chapter 122A.

North Carolina Housing Finance Agency.

§ 122A-5.13. Adult Care Home, Group Home, and Nursing Home Fire Protection Fund authorized; authority.

(a) The North Carolina Housing Finance Agency shall establish an Adult Care Home, Group Home, and Nursing Home Fire Protection Fund (hereinafter "Fire Protection Fund") to assist owners of adult care homes, group homes for developmentally disabled adults, and nursing homes with the purchase and installation of fire protection systems and emergency generators in existing and new adult care homes, group homes for developmentally disabled adults, and nursing homes. The Fire Protection Fund shall be a revolving fund.

(b) The Agency, in consultation with the Department of Health and Human Services, shall adopt rules for the management and use of the Fire Protection Fund. These rules at a minimum shall provide for the following:

(1) Financial incentives for owners of facilities who utilize Fire Protection Fund monies to install sprinkler systems instead of smoke detection equipment.

(2) Maximum loan amounts of one dollar and seventy-five cents ($1.75) per square foot for advanced smoke detectors and digital communication equipment, three dollars and seventy-five cents ($3.75) per square foot for residential sprinkler systems, and six dollars ($6.00) per square foot for institutional sprinkler systems.

(3) Interest rates from three percent (3%) to six percent (6%) for a period not to exceed 20 years for sprinkler systems and 10 years for smoke detection systems.

(4) Documentary verification that owners of facilities obtain fire protection systems and emergency generators at a reasonable cost.

(5) Acceleration of a loan when statutory fire protection requirements are not met by the facility for which the loan was made.

(6) Loan approval priority criteria that considers the frailty level of residents at a facility.

(7) Loan origination and servicing fees.

(c) Proceeds from the Fire Protection Fund, not to exceed ten thousand dollars ($10,000) annually, may be used to provide staff support to the North Carolina Housing Finance Agency for loan processing under this section and to the Department of Health and Human Services for review and approval of fire protection plans and inspection of fire protection systems. (1996, 2nd Ex. Sess., c. 18, s. 24.26B(a); 1997-443, s. 11A.118(a); 1999-237, s. 11.17; 2000-67, s. 11.10.)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 11.10, effective July 1, 2000, inserted "and emergency generators" in subsection (a) and subdivision (b)(4).

§ 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, Planning, 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. The Agency shall on January 1 and July 1 of each year submit a written report of its activities to the Joint Legislative Commission on Governmental Operations. The Agency shall also at the end of each fiscal year submit a written report of its budget expenditures by line item to the Joint Legislative Commission on Governmental Operations. (1969, c. 1235, s. 16; 1973, c. 1296, s. 56; 1977, c. 673, s. 3; c. 771, s. 4; 1981, c. 895, s. 4; 1981 (Reg. Sess., 1982), c. 1191, s. 34; 1983 (Reg. Sess., 1984), c. 1034, s. 134; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

Chapter 122C.

Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

Article 1.

General Provisions.

Article 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

Article 3.

Clients' Rights and Advance Instruction.

Part 1. Client's Rights.

Article 3A.

Miscellaneous Provisions.

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 2. State, County and Area Authority.

Part 5. State Facilities.

Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

Article 5.

Procedures for Admission and Discharge of Clients.

Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

ARTICLE 1.

General Provisions.

§ 122C-1. Short title.

CASE NOTES

Personal Jurisdiction in Molestation by Foster Child Case. — Where defendants raised the issues of failure to state a claim and lack of subject matter jurisdiction, but failed to raise the issue of personal jurisdiction, and stipulated in the record before the appellate court that they were properly before the trial court, the defendants could not argue that they were not subject to suit under Chapter 108A, § 153A-77, and this section. Hobbs v. North Carolina Dep't of Human Resources, 135 N.C. App. 412, 520 S.E.2d 595 (1999).

§ 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Area authority" means the area mental health, developmental disabilities, and substance abuse authority.

(2) "Area board" means the area mental health, developmental disabilities, and substance abuse board.

(3) "Camp Butner reservation" means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.

(4) "City" has the same meaning as in G.S. 153A-1(1).

(5) "Catchment area" means the geographic part of the State served by a specific area authority.

(6) "Client" means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(7) "Client advocate" means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.

(8) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(9) "Confidential information" means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. "Confidential information" does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

(10) "County of residence" of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.

(11) "Dangerous to himself or others" means:

a. "Dangerous to himself" means that within the relevant past:

1. The individual has acted in such a way as to show:

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

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

2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. "Dangerous to others" means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

(11a) "Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.

(12) "Department" means the North Carolina Department of Health and Human Services.

(12a) "Developmental disability" means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
c. Is likely to continue indefinitely;
d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and
e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or
f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(13) "Division" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department.
(13a) Repealed by Session Laws 2000-67, s. 11.21(c), effective July 1, 2000.
(13a1) Recodified as subdivision (13c).
(13b) Recodified as subdivision (13d).
(13c) "Eligible infants and toddlers" means children with or at risk for developmental delays or atypical development until:
a. They have reached their third birthday;
b. Their parents have requested to have them receive services in the preschool program for handicapped children established pursuant to Part 14 of Article IX of Chapter 115C of the General Statutes; and
c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday.

The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early intervention services shall be appropriate to the individual child's age and development.
(13d) "Eligible psychologist" means a licensed psychologist who has at least two years' clinical experience. After January 1, 1995, "eligible psychologist" means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.
(14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:
a. An "area facility", which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
b. A "licensable facility", which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or developmentally disabled, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;
c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;
e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;
f. A "State facility", which is a facility that is operated by the Secretary;
g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and
h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.

(15) "Guardian" means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.

(16) "Habilitation" means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

(17) "Incompetent adult" means an adult individual adjudicated incompetent.

(18) "Intoxicated" means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.

(19) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.

(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of attorney as prescribed in Article 3 of Chapter 32 of the General Statutes.

(20a) "Local funds" means fees from services, including client payments, Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds, and any other funds not administered by the Division.

(21) "Mental illness" means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.

(22) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(23) "Mentally retarded with accompanying behavior disorder" means an individual who is mentally retarded and who has a pattern of

maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

(24) "Next of kin" means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, "next of kin" means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.

(25) "Operating costs" means expenditures made by an area authority in the delivery of services for mental health, developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.

(26) Repealed by Session Laws 1987, c. 345, s. 1.

(26a) "Other recipient" means an individual who is not admitted to a facility but who receives a service other than care, treatment, or rehabilitation services. The services that the "other recipient" may receive include consultative, preventative, educational, and assessment services.

(27) "Outpatient treatment" as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(28) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.

(29) "Physician" means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.

(30) "Provider of support services" means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.

(30a) "Psychologist" means an individual licensed to practice psychology under Chapter 90. The term "eligible psychologist" is defined in subdivision (13a).

(31) "Qualified professional" means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, certified fee-based practicing pastoral counselors, and certified counselors.

(32) "Responsible professional" means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.

(33) "Secretary" means the Secretary of the Department of Health and Human Services.

(33a) "Severe and persistent mental illness" means a mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation.

(34) "Single portal of entry and exit policy" means an admission and discharge policy for designated facilities that is adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among designated facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes or federal law, nor may the policy include the complete exclusion of clients from admission to any specific facility.

(35) "Single portal area" means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.

(35a) "State resources" means State and federal funds and other receipts administered by the Division.

(36) "Substance abuse" means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. "Substance abuse" may include a pattern of tolerance and withdrawal.

(37) "Substance abuser" means an individual who engages in substance abuse. (1899, c. 1, s. 28; Rev., s. 4574; C.S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4; 1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 7; 1987, c. 345, s. 1; c. 830, ss. 47(a), (b); 1989, c. 141, s. 8; c. 223; c. 486, s. 2; c. 625, s. 2; 1989 (Reg. Sess., 1990), c. 823, s. 11; c. 1003, s. 2; c. 1024, s. 26(a); 1993, c. 321, s. 220(a)-(c); c. 375, s. 6; c. 396, ss. 1, 2; 1995, c. 249, s. 1; c. 406, s. 5; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1998-198, s. 3; 1998-202, s. 4(r); 1999-186, s. 1; 2000-67, s. 11.21(c).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 11.21(c), effective July 1, 2000, repealed subdivision (13a), which defined "eligible assaultive and violent children."

§ 122C-5. Report on restraint and seclusion.

The Secretary shall report annually on October 1 to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services on the following for the immediately preceding fiscal year:

(1) The level of compliance of each facility with applicable State and federal laws, rules, and regulations governing the use of restraints and seclusion. The information shall indicate areas of highest and lowest levels of compliance.

(2) The total number of facilities that reported deaths under G.S. 122C-31, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 122C-31, and the number found by the investigation to be related to the use of restraint or seclusion. (2000-129, s. 3(b).)

Effect of Amendments. — Session Laws 2000-129, s. 7, made this section effective January 1, 2001.

§§ 122C-6 through 122C-20: Reserved for future codification purposes.

ARTICLE 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

§ 122C-21. Purpose.

Cross References. — As to penalties for violations of this Article, see § 122C-24.1

§ 122C-22. Exclusions from licensure; deemed status.

(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists engaged in private office practice;

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance abusers;

(3) State and federally operated facilities;

(4) Adult care homes licensed under Chapter 131D of the General Statutes;

(5) Developmental child care centers licensed under Article 7 of Chapter 110 of the General Statutes;

(6) Persons subject to licensure under rules of the Social Services Commission;

(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services; and

(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14).

(9) Twenty-four-hour nonprofit facilities established for the purposes of shelter care and recovery from alcohol or other drug addiction through a 12-step, self-help, peer role modeling, and self-governance approach.

(b) The Commission may adopt rules establishing a procedure whereby a licensable facility certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this

Article by the Secretary. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary. (1983, c. 718, s. 1; 1983 (Reg. Sess., 1984), c. 1110, s. 5; 1985, c. 589, s. 2; c. 695, s. 13; 1987, c. 345, s. 2; 1989, c. 625, s. 5; 1995, c. 535, s. 7; 1997-506, s. 43; 2000-67, s. 11.25A.)

Editor's Note. —
Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 11.25A, effective July 1, 2000, added subdivision (a)(9).

§ 122C-23. Licensure.

(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, developmentally disabled, or substance abusers without a current license issued by the Secretary.

(b) Each license is issued to the person only for the premises named in the application and shall not be transferrable or assignable except with prior written approval of the Secretary.

(c) Any person who intends to establish, maintain, or operate a licensable facility shall apply to the Secretary for a license. The Secretary shall prescribe by rule the contents of the application forms.

(d) The Secretary shall issue a license if the Secretary finds that the person complies with this Article and the rules of the Commission and Secretary.

(e) Unless a license is provisional or has been suspended or revoked, it shall be valid for a period not to exceed two years from the date of issue. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person who is temporarily unable to comply with a rule or rules. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. The noncompliance may not present an immediate threat to the health and safety of the individuals in the licensable facility. A provisional license for an additional period of time to meet the noncompliance may not be issued.

(f) Upon written application and in accordance with rules of the Commission, the Secretary may for good cause waive any of the rules implementing this Article, provided those rules do not affect the health, safety, or welfare of the individuals within the licensable facility. Decisions made pursuant to this subsection may be appealed to the Commission for a hearing in accordance with Chapter 150B of the General Statutes.

(g) The Secretary may suspend the admission of any new clients to a facility licensed under this Article where the conditions of the facility are detrimental to the health or safety of the clients. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removal of the suspension. In suspending admissions under this subsection, the Secretary shall consider the following factors:

(1) The degree of sanctions necessary to ensure compliance with this section and rules adopted to implement this subsection, and
(2) The character and degree of impact of the conditions at the facility on the health or safety of its clients.

A facility may contest a suspension of admissions under this subsection in accordance with Chapter 150B of the General Statutes. In contesting the suspension of admissions, the facility must file a petition for a contested case within 20 days after the Department mails notice of suspension of admissions to the licensee. (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. 813, s. 1; c. 1166, s. 7; 1965, c. 1178, ss. 1-3; 1969, c. 954; 1973, c. 476, ss. 133, 152; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1983, c. 718, ss. 1, 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 8; 1987, c. 345, ss. 3, 4; 1989, c. 625, s. 6; 2000-55, s. 3.)

Effect of Amendments. — Session Laws 2000-55, s. 3, effective October 1, 2000, added subsection (g).

§ 122C-24.1. Penalties; remedies.

(a) Violations Classified. — The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility licensed under this Article which is found to be in violation of Article 2 or 3 of this Chapter or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) "Type A Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:

a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;

b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and

c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5,000) for each Type A Violation in facilities or programs that serve nine or fewer persons. The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type A Violation in facilities or programs that serve 10 or more persons.

(2) "Type B Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any client or patient, but which does not result in substantial risk that death or serious physical harm will occur. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.

(b) Penalties for Failure to Correct Violations Within Time Specified. —

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five

hundred dollars ($500.00) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for the failure. The Department or its authorized representative shall ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) of subsection (a) of this section when a facility under the same management, ownership, or control has received a citation and paid a penalty for violating the same specific provision of a statute or regulation for which it received a citation during the previous 12 months.

(c) Factors to Be Considered in Determining Amount of Initial Penalty. — In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the fact that death or serious physical harm to a client or patient has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The gravity of the violation, including the probability that death or serious physical harm to a client or patient will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(3) The gravity of the violation, including the probability that death or serious physical harm to a client or patient may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(4) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and other applicable State and federal laws and regulations;

(5) Efforts by the licensee to correct violations;

(6) The number and type of previous violations committed by the licensee within the past 36 months;

(7) The amount of assessment necessary to ensure immediate and continued compliance; and

(8) The number of clients or patients put at risk by the violation.

(d) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Department shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The licensee involved;

(2) The clients or patients affected; and

(3) The family members or guardians of the clients or patients affected.

(e) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(f) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and
(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.

(g) Any penalty imposed by the Department of Health and Human Services under this section shall commence on the day the violation began.

(h) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred 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 the penalty, or
(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(i) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:
(1) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and
(2) The training is:
a. Specific to the violation;
b. Approved by the Department of Health and Human Services; and
c. Taught by someone approved by the Department and other than the provider.

(j) The clear proceeds of civil penalties provided for in this section shall be remitted to the State Treasurer for deposit in accordance with State law.

(k) In considering renewal of a license, the Department shall not renew a license if outstanding fines and penalties imposed by the Department against the facility or program have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration for nonrenewal under this subsection. (2000-55, s. 4.)

Editor's Note. — Session Laws 2000-55, s. 7, made this section effective October 1, 2000.

§ 122C-26. Powers of the Commission.

In addition to other powers and duties, the Commission shall exercise the following powers and duties:
(1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
(2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;
(3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article;
(4) Adopt rules for the waiver of rules adopted under this Article; and
(5) Adopt rules applicable to facilities licensed under this Article:
a. Establishing personnel requirements of staff employed in facilities;
b. Establishing qualifications of facility administrators or directors;
c. Establishing requirements for death reporting including confidentiality provisions related to death reporting; and
d. Establishing requirements for patient advocates. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 2000-55, s. 5.)

Editor's Note. — Session Laws 2000-55, s. 6, provides that, notwithstanding G.S. 150B-21.1(a), the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services is to adopt temporary rules to implement G.S. 122C-26(5).

Effect of Amendments. — Session Laws 2000-55, s. 5, effective June 30, 2000, added subdivision (5) and made a minor punctuation change.

§ 122C-30. Peer review committee; immunity from liability; confidentiality.

CASE NOTES

Cited in Sharpe v. Worland, — N.C. App. —, 527 S.E.2d 75, 2000 N.C. App. LEXIS 269 (2000).

§ 122C-31. Report required upon death of client.

(a) A facility shall notify the Secretary immediately upon the death of any client of the facility that occurs within seven days of physical restraint or seclusion of the client, and shall notify the Secretary within three days of the death of any client of the facility resulting from violence, accident, suicide, or homicide. The Secretary may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Secretary of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Secretary shall notify the Governor's Advocacy Council for Persons With Disabilities that a person with a disability has died. The Secretary shall provide the Council access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The Council shall use the information in accordance with its powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

(c) If the death of a client of a facility occurs within seven days of the use of physical restraint or seclusion, then the Secretary shall initiate immediately an investigation of the death.

(d) An inpatient psychiatric unit of a hospital licensed under Chapter 131E of the General Statutes shall comply with this section.

(e) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Secretary or the Council. In carrying out the requirements of this section, the Secretary and the Council shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(f) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section. (2000-129, s. 3(a).)

Effect of Amendments. — Session Laws 2000-129, s. 7, made this section effective January 1, 2001.

§§ 122C-32 through 122C-50: Reserved for future codification purposes.

ARTICLE 3.

Clients' Rights and Advance Instruction.

Part 1. Client's Rights.

§ 122C-51. Declaration of policy on clients' rights.

Cross References. — As to penalties for violations of this Article, see § 122C-24.1

§ 122C-60. Use of physical restraints or seclusion.

(a) Physical restraint or seclusion of a client shall be employed only when there is imminent danger of abuse or injury to the client or others, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment. All instances of restraint or seclusion and the detailed reasons for such action shall be documented in the client's record. Each client who is restrained or secluded shall be observed frequently, and a written notation of the observation shall be made in the client's record.

(a1) A facility that employs physical restraint or seclusion of a client shall collect data on the use of the restraints and seclusion. The data shall reflect for each incidence, the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary. The facility shall make the data available to the Secretary upon request. Nothing in this subsection abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Secretary under this subsection. In reviewing data requested under this subsection, the Secretary shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this subsection.

(a2) Facilities shall implement policies and practices that emphasize the use of alternatives to physical restraint and seclusion. Physical restraint and seclusion may be employed only by staff who have been trained and have demonstrated competence in the proper use of and alternatives to these procedures. Facilities shall ensure that staff authorized to employ and terminate these procedures are retrained and have demonstrated competence at least annually.

(b) The Commission shall adopt rules to implement this section. In adopting rules, the Commission shall take into consideration federal regulations and national accreditation standards. Rules adopted by the Commission shall include:

(1) Staff training and competence in:

a. The use of positive behavioral supports.

b. Communication strategies for defusing and deescalating potentially dangerous behavior.
c. Monitoring vital indicators.
d. Administration of CPR.
e. Debriefing with client and staff.
f. Methods for determining staff competence, including qualifications of trainers and training curricula.
g. Other areas to ensure the safe and appropriate use of restraints and seclusion.

(2) Other matters relating to the use of physical restraint or seclusion of clients necessary to ensure the safety of clients and others.

The Department may investigate complaints and inspect a facility at any time to ensure compliance with this section. (1973, c. 475, s. 1; 1985, c. 589, s. 2; 2000-129, s. 1.)

Effect of Amendments. — Session Laws 2000-129, s. 1, effective January 1, 2001, substituted "the client" for "himself" in subsection (a); added subsections (a1) and (a2); and in subsection (b), substituted "shall adopt" for "may adopt" in the first sentence and added the last sentence.

§§ **122C-78, 122C-79:** Reserved for future codification purposes.

Article 3A.

Miscellaneous Provisions.

§ 122C-80. Criminal history record check required for certain applicants for employment.

(a) Definition. — As used in this section, "area authority" means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.

(b) Requirement. — An offer of employment by an area authority licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An area authority shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an area authority shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. All criminal history information received by the area authority is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section.

(c) Action. — If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the area authority shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.

(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the area authority. If the area authority disqualifies an applicant after consideration of the relevant factors, then the area authority may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(d) Limited Immunity. — An area authority and an officer or employee of an area authority that, in good faith, complies with this section shall be immune from civil liability for:

(1) The failure of the area authority to employ an individual on the basis of information provided in the criminal history record check of the individual.
(2) Failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section.

(e) Relevant Offense. — As used in this section, "relevant offense" means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(f) Penalty for Furnishing False Information. — Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(g) Conditional Employment. — An area authority may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The area authority shall not employ an applicant prior to obtaining the applicant's consent for criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The area authority shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment. (2000-154, s. 4.)

Editor's Note. — Session Laws 2000-154, s. 7, made the Article effective January 1, 2001, and applicable to offenses committed and offers of employment made on and after that date.

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 1. Policy.

§ 122C-101. Policy.

CASE NOTES

Quoted in Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772 (1999), cert. denied, 351 N.C. 122, — S.E.2d — (1999).

Part 2. State, County and Area Authority.

§ 122C-112. Powers and duties of the Secretary.

(a) The Secretary shall:

(1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;

(2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;

(3) Operate State facilities and adopt rules pertaining to their operation;

(4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;

(5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;

(6) Adopt rules governing the expenditure of all area authority funds;

(6a) Adopt rules to implement the appeal procedure authorized by G.S. 122C-151.2;

(7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;

(8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter;

(9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;

(10) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse;

(11) Administer and enforce rules that are conditions of participation in federal or State financial aid;

(12) Carry out G.S. 122C-361; and

(13) Ensure, in cooperation with other appropriate agencies, that all types of early intervention services specified in the "Individuals with Disabilities Education Act (IDEA), P.L. 102-119, the federal early intervention legislation, are available to all eligible infants and toddlers and their families to the extent funded by the General Assembly.

The Secretary shall coordinate and facilitate the development and administration of the early intervention system for eligible infants and toddlers and shall assign among the cooperating agencies the responsibility, including financial responsibility, for services. The Secretary shall be advised by the Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families, established by G.S. 143B-179.5, and may enter into formal interagency agreements to establish the collaborative relationships with the Department of Public Instruction, other appropriate agencies, and other public and private service providers necessary to administer the system and deliver the services.

The Secretary shall adopt rules to implement the early intervention system, in cooperation with all other appropriate agencies;

(14) Repealed by Session Laws 2000-67, s. 11.21(d), effective July 1, 2000;

(15) Upon the death of any prospective or confirmed Thomas S. class member as identified in Thomas S. et al. vs. Britt, (C-C-82-0418-M, Western District) not residing in a State facility listed in G.S. 122C-181, investigate the circumstances leading to that death. The investigation shall analyze any unusual circumstances relating to the death. The Secretary shall adopt rules to implement this subsection. The Secretary shall have access to all medical records, hospital records, and records maintained by the State, any county, or any local agency necessary to carry out the purposes of this subsection, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records.

(16) Monitor the fiscal and administrative practices of area mental health programs to ensure that the programs are accountable to the State for the management and use of federal and State funds allocated for mental health, developmental disabilities, and substance abuse services. The Secretary shall ensure maximum accountability by area programs for rate-setting methodologies, reimbursement procedures, billing procedures, provider contracting procedures, record keeping, documentation, and other matters pertaining to financial management and fiscal accountability. The Secretary shall further ensure that the practices are consistent with professionally accepted accounting and management principles.

(b) The Secretary may:

(1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other personal property necessary to carry out the mental health, developmental disabilities, and substance abuse programs;

(2) Sponsor training opportunities in the fields of mental health, developmental disabilities, and substance abuse;

(3) Promote and conduct research in the fields of mental health, developmental disabilities, and substance abuse;

(4) Provide technical assistance for the development and improvement of prevention services;

(5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description which shall be used by the Secretary for the purpose of carrying out mental health, developmental disabilities, and substance abuse programs. Any donations shall be reported to the Office of State Budget, Planning, and Management as determined by that office;

(6) Accept, allocate, and spend any federal funds for mental health, developmental disabilities, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, developmental disabilities, or substance abuse purposes specified;

(7) Enter agreements authorized by G.S. 122C-346;

(8) Accept, allocate, and spend funds from the United States Department of Defense to operate mental health demonstration projects for families of the uniformed services. Demonstration projects shall be operated through an area authority. The operation of these demonstration projects may be accomplished through subcontracts with one or more private sector providers; and

(9) Authorize funds for contracting with a person, firm, or corporation for aid or assistance in locating, recruiting, or arranging employment of health care professionals in any facility listed in G.S. 122C-181, notwithstanding the provisions of G.S. 126-18.

(10) Contract with one or more private providers or other public service agencies to serve clients of an area authority and reallocate the area authority's funds to pay for services under the contract if the Secretary finds all of the following:

a. The area authority refuses or has failed to provide the services to clients within its service area in a manner that is at least adequate.

b. Clients within the area authority's service area will either not be served or will suffer an unreasonable hardship if required to obtain the services from another area authority.

c. There is at least one private provider or public service agency within the area authority's service area willing and able to provide services under contract.

Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area board of the Secretary's intent to contract, and shall provide the area authority an opportunity to be heard.

(11) Contract with one or more private providers or other public service agencies to serve clients from more than one area authority and reallocate the funds of the applicable area authorities to pay for services under the contract if the Secretary finds either that there is no area program available to act as the administrative entity under contract with the provider or that the administering area program refuses or has failed to properly manage and administer the contract with the contract provider and clients will either not be served or will suffer unreasonable hardship if services are not provided under the contract. Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area board of the Secretary's intent to contract, and shall provide the area authority an opportunity to be heard. (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, ss. 5, 6; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1-3, 5; 1963, c. 451, s. 1; c. 1166, ss. 3, 6, 10; c. 1184, s. 6; 1965, c. 800, s. 1; c. 929, s. 3; 1969, c. 676, s. 2; 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. 2-4, 23; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2; 1987, c. 720, s. 2; c. 830, s. 47(c); 1989, c. 625, s. 14; 1989 (Reg. Sess., 1990), c. 1003, s. 3; 1991, c. 689, s. 135; 1993, c. 321, s. 220(p); c. 487, s. 2; 1995, c. 249, s. 2; c. 498, s. 1; 1997-443, s. 11A.53; 1998-212, s. 12.35C(a), (c); 2000-67, s. 11.21(d); 2000-140, s. 93.1(a).)

Editor's Note. —
Session Laws 2000-67, s. 11.21(d) provided that § 122C-122(14) was repealed. The repeal has been implemented at § 122C-112(a)(14) at the direction of the Revisor of Statutes.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —
Session Laws 2000-67, s. 11.21(d), effective July 1, 2000, repealed subdivision (a)(14), pertaining to the adoption of rules to determine eligibility for services to eligible assaultive and violent children.

Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subdivision (b)(5).

§ 122C-113. Cooperation between Secretary and other agencies.

(a) The Secretary shall cooperate with other State agencies to coordinate services for the treatment and habilitation of individuals who are mentally ill, developmentally disabled, or substance abusers. The Secretary shall also coordinate with these agencies to provide public education to promote a better understanding of mental illness, developmental disabilities, and substance abuse.

(b) The Secretary shall promote cooperation among area facilities, State facilities, and local agencies to facilitate the provision of services to individuals who are mentally ill, developmentally disabled, or substance abusers.

(b1) The Secretary shall cooperate with the State Board of Education and the Department of Juvenile Justice and Delinquency Prevention in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the Department of Juvenile Justice and Delinquency Prevention, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction, in consultation with the Department of Juvenile Justice and Delinquency Prevention, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs.

(c) The Secretary shall adopt rules to assure this coordination. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1987, c. 863, s. 1; 1989, c. 625, s. 14; 1993, c. 522, s. 9; 1997-443, s. 11A.118(a); 1998-202, s. 4(s); 2000-137, s. 4(v).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(v), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" four times in subsection (b1).

§ 122C-116. Status of area authority; status of consolidated human services agency.

CASE NOTES

Quoted in Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772 (1999), cert. denied, 351 N.C. 122, — S.E.2d — (1999).

§ 122C-117. Powers and duties of the area authority.

(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;

(2) Provide services to clients in the catchment area, including clients committed to the custody of the Department of Juvenile Justice and Delinquency Prevention;

(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the Department of Juvenile Justice and Delinquency Prevention the provision of services to clients through area and State facilities;

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;

(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;

(6) Comply with federal requirements as a condition of receipt of federal grants; and

(7) Appoint an area director, chosen through a search committee on which the Secretary of the Department of Health and Human Services or the Secretary's designee serves as a nonvoting member.

(a1) The area authority may contract to provide services to governmental or private entities, including Employee Assistance Programs.

(b) The governing unit of the area authority is the area board. All powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board. (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. 1, 3, 14, 23; 1981, c. 51, s. 3; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1987, c. 830, s. 47(d); 1989, c. 625, s. 14; 1991, c. 215, s. 1; 1995 (Reg. Sess., 1996), c. 749, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 4(t); 2000-137, s. 4(w).)

Effect of Amendments. — Session Laws 2000-137, s. 4(w), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subdivisions (a)(2) and (3).

§ 122C-120. Compensation of area board members.

(a) Area board members may receive as compensation for their services per diem and a subsistence allowance for each day during which they are engaged in the official business of the area board. The amount of the per diem and subsistence allowances shall be established by the area board. The amount of per diem allowance shall not exceed fifty dollars ($50.00). Reimbursement of subsistence expenses shall be at the rates allowed to State officers and employees under G.S. 138-6(a)(3).

(b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board. (1979, c. 358, s. 28; 1985, c. 589, s. 2; 2000-67, s. 11.18.)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 11.18, effective July 1, 2000, in subsection (a), deleted "and the amounts shall not exceed those authorized by G.S. 138-5 for State boards" following "by the area" in the second sentence and added the third sentence.

Part 4. Area Facilities.

§ 122C-154. Personnel.

CASE NOTES

Quoted in Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772 (1999), cert. denied, 351 N.C. 122, — S.E.2d — (1999).

Part 5. State Facilities.

§ 122C-185. Application of funds belonging to State facilities.

(a) All moneys and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget, Planning, and Management. All moneys and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed and except as required for deposit with the State treasury, shall not be subject to the provisions of the Executive Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143-18.1.

(b) Proceeds from the transfer or sale of surplus, obsolete, or unused equipment of State facilities shall be deposited and accounted for in accordance with G.S. 143-49(4).

(c) The net proceeds from the sale, lease, rental, or other disposition of real estate owned by a State facility shall be deposited and accounted for in accordance with G.S. 146-30.

(d) All proceeds from the operation of vending facilities as defined in G.S. 111-42(d) and operated by State facilities shall be deposited and accounted for in accordance with G.S. 143-12.1.

(e) All other revenues and other receipts collected by a State facility shall be deposited to the credit of the State treasury in accordance with G.S. 147-77. (1899, c. 1, s. 34; Rev., s. 4552; C.S., s. 6167; 1963, c. 1166, s. 13; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (a).

Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

§§ 122C-194 through 122C-200: Repealed by Session Laws 2000-67, s. 11.21(e), effective July 1, 2000.

Editor's Note. — Session Laws 2000-67, s. 11.21(e), which repealed Sections 122C-194 through 122C-200, provides that the repeal is applicable to petitions for contested case review filed on or after July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Article 5.

Procedures for Admission and Discharge of Clients.

Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

§ 122C-224.1. Duties of clerk of court.

(a) **(Effective until July 1, 2001)** Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk of superior court, under direction of the district court judge, shall appoint an attorney for the minor. When a minor has been admitted to a State facility for the mentally ill, the attorney appointed shall be the attorney employed in accordance with G.S. 122C-270(a) through (c). All minors shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any minor an affidavit of indigency. The attorney shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency. The judge may require payment of the attorney's fee from a person other than the minor as provided in G.S. 7A-450.1 through G.S. 7A-450.4.

(a) **(Effective July 1, 2001)** Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, an attorney shall be appointed for the minor in accordance with rules adopted by the Office of Indigent Defense Services. When a minor has been admitted to a State facility for the mentally ill, the attorney appointed shall be the attorney employed in accordance with G.S. 122C-270(a) through (c). All minors shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any minor an affidavit of indigency. The attorney shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services. The judge may require payment of the attorney's fee from a person other than the minor as provided in G.S. 7A-450.1 through G.S. 7A-450.4.

(b) Upon receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk shall calendar a hearing to be held within 15 days of admission for the purpose of review of the minor's admission. Notice of the time and place of the hearing shall be given as provided in G.S. 1A-1, Rule 4(j) to the attorney in lieu of the minor, as soon as possible but not later than 72 hours before the scheduled hearing. Notice of the hearing shall be sent to the legally responsible person and the responsible professional as soon as possible but not later than 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address.

(c) The clerk shall schedule all hearings and rehearings and send all notices as required by this Part. (1987, c. 370, s. 1; 2000-144, s. 37.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2001. The second version of subsection (a) set out above is effective July 1, 2001.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Effect of Amendments. — Session Laws 2000-144, s. 37, effective July 1, 2001, in subsection (a), substituted "an attorney shall be appointed for the minor in accordance with rules adopted by the Office of Indigent Defense Services" for "the clerk of superior court, under direction of the district court judge, shall appoint an attorney for the minor" and substituted "in accordance with rules adopted by the Office of Indigent Defense Services" for "fixed by the court in the same manner as fees for attorneys appointed in cases of indigency."

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

§ 122C-267. Outpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). Upon its own motion or upon motion of the proposed outpatient treatment physician or the respondent, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the proposed outpatient treatment physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence.

(d) **(Effective until July 1, 2001)** At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent.

(d) **(Effective July 1, 2001)** At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services.

(e) Hearings may be held at the area facility in which the respondent is being treated, if it is located within the judge's district court district as defined in G.S. 7A-133, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

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

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the client is indigent, the copies shall be provided at State expense.

(h) To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-263(d)(1). The court shall record the facts which support its findings and shall show on the order the center or physician who is responsible for the management and supervision of the respondent's outpatient commitment. (1973, c. 726, s. 1; c. 1408, s. 1; 1975, cc. 322, 459; 1977, c. 400, s. 7; c. 1126, s. 1; 1979, c. 915, ss. 7, 13; 1983, c. 380, s. 6; c. 638, ss. 12, 13; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 8; 1987, c. 282, s. 18; 1987 (Reg. Sess., 1988), c. 1037, s. 113.1; 2000-144, s. 38.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 2001. The second version of subsection (d) set out above is effective July 1, 2001.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Effect of Amendments. — Session Laws 2000-144, s. 38, effective July 1, 2001, added the last sentence in subsection (d).

§ 122C-268. Inpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into law enforcement custody pursuant to G.S. 122C-261(e) or G.S. 122C-262. A continuance of not more than five days may be granted upon motion of:

(1) The court;
(2) Respondent's counsel; or
(3) The State, sufficiently in advance to avoid movement of the respondent.

(b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held for respondents admitted pursuant to this Part or G.S. 15A-1321 at the facility to which he is assigned.

In addition, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing held in a place other than at one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill.

(c) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found incapable of proceeding may represent the State's interest at the hearing.

(d) **(Effective until July 1, 2001)** The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or

§ 122C-268(d) is set out twice. See notes.

refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed by the court.

(d) **(Effective July 1, 2001)** The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.

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

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) Hearings may be held in an appropriate room not used for treatment of clients at the facility in which the respondent is being treated if it is located within the judge's district court district as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

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

(i) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b. The court shall record the facts that support its findings. (1985, c. 589, s. 2; c. 695, s. 8; 1985 (Reg. Sess., 1986), c. 1014, s. 195(b); 1987 (Reg. Sess., 1988), c. 1037, s. 114; 1989, c. 141, s. 11; 1989 (Reg. Sess., 1990), c. 823, s. 7; 1991, c. 37, s. 10; c. 257, s. 2; 1995 (Reg. Sess., 1996), c. 739, s. 11(a), (b); 2000-144, s. 39.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 2001. The second version of subsection (d) set out above is effective July 1, 2001.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Effect of Amendments. — Session Laws 2000-144, s. 39, effective July 1, 2001, substituted "in accordance with rules adopted by the Office of Indigent Defense Services" for "by the court" in subsection (d).

§ 122C-268.1. Inpatient commitment; hearing following automatic commitment.

(a) A respondent who is committed pursuant to G.S. 15A-1321 shall be provided a hearing, unless waived, before the expiration of 50 days from the date of his commitment.

(b) The district attorney in the county in which the respondent was found not guilty by reason of insanity may represent the State's interest at the hearing, rehearings, and supplemental rehearings. Notwithstanding the provisions of G.S. 122C-269, if the district attorney elects to represent the State's interest, upon motion of the district attorney, the venue for the hearing, rehearings, and supplemental rehearings shall be the county in which the respondent was found not guilty by reason of insanity. If the district attorney declines to represent the State's interest, then the representation shall be determined as follows. An attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, may represent the State's interest at commitment hearings, rehearings, and supplemental hearings. Alternatively, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing.

(c) The clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d1).

(d) **(Effective until July 1, 2001)** The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed by the court.

(d) **(Effective July 1, 2001)** The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.

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

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) The hearing shall take place in the trial division in which the original trial was held. The hearing shall be open to the public. For purposes of this subsection, "trial division" means either the superior court division or the district court division of the General Court of Justice.

(h) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of the presiding judge. If the respondent is indigent, the copies shall be provided at State expense.

(i) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall order the respondent discharged and released. If the court finds that the respondent has not met his burden of proof, then the court shall order that inpatient commitment continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a period not to exceed 90 days. The court shall make a written record of the facts that support its findings.

(j) Nothing in this section shall limit the respondent's right to habeas corpus relief. (1991, c. 37, s. 2; 1991 (Reg. Sess., 1992), c. 1034, ss. 2, 3; 1995, c. 140, s. 1; 2000-144, s. 40.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 2001. The second version of subsection (d) as set out above is effective July 1, 2001.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Effect of Amendments. — Session Laws 2000-144, s. 40, effective July 1, 2001, substituted "in accordance with rules adopted by the Office of Indigent Defense Services" for "by the court" in subsection (d).

§ 122C-269. Venue of hearing when respondent held at a 24-hour facility pending hearing.

(a) In all cases where the respondent is held at a 24-hour facility pending hearing as provided in G.S. 122C-268, G.S. 122C-268.1, 122C-276.1, or 122C-277(b1), unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated, except as otherwise provided in subsection (c) of this section.

(b) **(Effective until July 1, 2001)** 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 where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-268(d).

(b) **(Effective July 1, 2001)** 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 where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. The counsel for indigent respondents the counsel provided for in G.S. 122C-268(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(c) Upon motion of any interested person, the venue of an initial hearing described in G.S. 122C-268(c) or G.S. 122C-268.1 or a rehearing required by G.S. 122C-276(b), G.S. 122C-276.1, or subsections (b) or (b1) of G.S. 122C-277 shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change. (1975, 2nd Sess., c. 983, s. 133; 1981, c. 537, s. 6; 1983, c. 380, s. 7; 1985, c. 589, s. 2; 1991, c. 37, ss. 11, 12; 1995, c. 140, s. 2; 2000-144, s. 41.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2001. The second version of subsection (b) set out above is effective July 1, 2001.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Editor's Note. — Subsection (b), as effective July 1, 2001, was amended by Session Laws 2000-144, s. 41, in the coded bill drafting format provided by § 120-20.1. The phrase "counsel for indigent respondents" was apparently inadvertently not deleted.

Effect of Amendments. — Session Laws 2000-144, s. 41, effective July 1, 2001, in subsection (b), deleted "requesting clerk shall appoint as" preceding "counsel for indigent respondents" and added "shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

§ 122C-270. (Effective July 1, 2001) Attorneys to represent the respondent and the State.

(a) In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill. These special counsel shall serve at the pleasure of the Commission, may not privately practice law, and shall receive annual compensation within the salary range for assistant public defenders as fixed by the Office of Indigent

§ 122C-270 has a postponed effective date. See notes.

Defense Services. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned in accordance with rules adopted by the Office of Indigent Defense Services. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Director of the Office of Indigent Defense Services, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, counsel for indigent respondents shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for his representation until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself to the facility.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321. (1973, c. 47, s. 2; c. 1408, s. 1; 1977, c. 400, s. 11; 1979, c. 915, s. 12; 1983, c. 275, ss. 1, 2; 1985, c. 589, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 115; 1989, c. 141, s. 12; 1991, c. 257, s. 1; 1995 (Reg. Sess., 1996), c. 739, s. 12(a); 2000-144, s. 42.)

For this section as in effect until July 1, 2001, see the main volume.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Effect of Amendments. — Session Laws 2000-144, s. 42, effective July 1, 2001, rewrote subsection (a); substituted "Office of Indigent Defense Services" for "Administrative Office of the Courts" in subsection (b); in subsection (c), substituted "in accordance with rules adopted by the Office of Indigent Defense Services" for "by a district judge of the district" and substituted "Director of the Office of Indigent Defense Services" for "Administrative Officer of the Courts"; and in subsection (d), deleted "a district court judge shall appoint" following "subsection (a) of this section" and substituted "shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services" for "from members of the bar of the county in accordance with G.S. 122C-268(d)."

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

§ 122C-286. Commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon its own motion or upon motion of the responsible professional, the respondent, or the State, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the responsible professional of the area authority or the proposed treating physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence, but the respondent's right to confront and cross-examine witnesses shall not be denied.

(d) **(Effective until July 1, 2001)** The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S. 7A-450, the court shall appoint counsel to represent him.

(d) **(Effective July 1, 2001)** The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S. 7A-450, counsel shall be appointed to represent the respondent in accordance with rules adopted by the Office of Indigent Defense Services.

(e) Hearings may be held at a facility if it is located within the judge's district court district as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

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

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(h) To support a commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-283(d)(1). The court shall record the facts that support its findings and shall show on the order the area authority or physician who is responsible for the management and supervision of the respondent's treatment. (1985, c. 589, s. 2; c. 695, s. 8; 1985 (Reg. Sess., 1986), c. 863, ss. 29, 30; 1987 (Reg. Sess., 1988), c. 1037, s. 117; 2000-144, s. 43.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 2001. The second version of subsection (d) set out above is effective July 1, 2001.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Effect of Amendments. — Session Laws 2000-144, s. 43, effective July 1, 2001, substituted "counsel shall be appointed to represent the respondent in accordance with rules adopted by the Office of Indigent Defense Services" for "the court shall appoint counsel to represent him" in subsection (d).

§ 122C-286.1. Venue of district court hearing when respondent held at a 24-hour facility pending hearing.

(a) In all cases where the respondent is held at a 24-hour facility pending the district court hearing as provided in G.S. 122C-286, unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated.

(b) **(Effective until July 1, 2001)** 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 where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-284. The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-286(d).

(b) **(Effective July 1, 2001)** 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 where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-284. The counsel provided for in G.S. 122C-286(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services. (1985 (Reg. Sess., 1986), c. 863, s. 31; 2000-144, s. 44.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2001. The second version of subsection (b) set out above is effective July 1, 2001.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Effect of Amendments. — Session Laws 2000-144, s. 44, effective July 1, 2001, substituted the present last sentence for "The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-286(d)."

ARTICLE 6.

Special Provisions.

Part 1. Camp Butner and Community of Butner.

§ 122C-403. Secretary's authority over Camp Butner reservation.

OPINIONS OF ATTORNEY GENERAL

Duties of the Planning Council. — Until there is a vacancy in the position of Town Manager, the Planning Council is not required to submit three names to the Secretary. If the Planning Council were required to submit names while the position is filled, it would have the de facto power to fire the current Town Manager, a result which is clearly inconsistent with the authority and discretion given to the Secretary. See opinion of Attorney General to R. Marcus Lodge General Counsel Department of Health and Human Services, 1997 N.C.A.G. 64 (11/4/97).

§ 122C-407. Water and sewer system.

Editor's Note. — Session Laws 2000-81, ss. 1-8, effective July 5, 2000, authorizes the issuance of state revenue bonds, not to exceed $40,000,000, to finance improvements to the water and sewer system for the Community of Butner and Camp Butner reservation. Specifically, the bonds are for paying the costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, and extension of the water supply and distribution system and sewage collection and disposal system and certain costs of issuance of the bonds. The bonds are to be issued in compliance the State and Local Government Revenue Bond Act, pursuant to an order adopted by the Council of State under G.S. 159-88, and are to be sold by the Local Government Commission pursuant to the provisions of Article 7 of Chapter 159. The bonds are tax exempt, excepting estate, inheritance, or gift taxes, income taxes on the gain from transfer of securities, and franchise taxes. Section 7 of the act provides that the act is supplemental and additional to powers conferred by other laws. It, being necessary for the health and welfare of the people of the State, is to be liberally construed. Section 7(d) contains a severability clause.

Chapter 124.

Internal Improvements.

Article 1.

General Provisions.

§ 124-1. Control of internal improvements.

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in G.S. 124-3. (1925, c. 157, s. 1; 2000-146, s. 2.)

Cross References. — As to the Future of the North Carolina Railroad Study Commission, see §§ 120-245 to 120-255.

Editor's Note. — Session Laws 2000-146, s. 6, effective December 1, 2000, designated §§ 124-1 to 124-7 as Article 1 of Chapter 124.

Effect of Amendments. — Session Laws 2000-146, s. 2, effective December 1, 2000, substituted "Control of" for "Governor and Council to control" in the catchline and added the last sentence.

§ 124-3. Report of railroad, canal, etc.; contents.

(a) The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, report annually to the Joint Legislative Commission on Governmental Operations. This report shall include:

(1) Number of shares owned by the State.
(2) Number of shares owned otherwise.
(3) Par value of the shares.
(4) Repealed by Session Laws 2000, c. 146, s. 3, effective July 1, 2000.
(5) Amount of bonded debt, and for what purpose contracted.
(6) Amount of other debt, and how incurred.
(7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.
(8) Amount of gross receipts for past year, and from what sources derived.
(9) An itemized account of expenditures for past year.
(10) A summary of all leases, sales, or acquisitions of real property to which the company has been a party since the last report.
(11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.
(12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.

(13) Annual financial statements, including notes, audited by an independent certified public accounting firm.

(b) Upon the request of the Governor or any committee of the General Assembly, a State-owned railroad company shall provide all additional information and data within its possession or ascertainable from its records. The State-owned railroad company shall not be deemed to have waived any attorney-client privilege when complying with this subsection. At the time a State-owned railroad company provides information under this section, it shall indicate whether the information is confidential. Confidential information shall be subject to subsection (c) of this section.

(c) Confidential information includes (i) information related to a proposed specific business transaction where inspection, examination, or copying of the records would frustrate the purpose for which the records were created, or (ii) information that is subject to confidentiality obligations of a railroad company. Confidential information shall not be subject to a request under G.S. 132-6(a). (1925, c. 157, s. 3; 1993, c. 539, s. 928; 1994, Ex. Sess., c. 24, s. 14(c); 2000-67, s. 7.2(b); 2000-146, s. 3.)

Effect of Amendments. — Session Laws 2000-67, s. 7.2(b), purported to amend this section effective July 1, 2000, by rewriting the introductory paragraph, substituting "Par value of the shares" for "Face value of such shares" in subdivision (3), deleting former subdivision (4), pertaining to market value of shares, rewriting subdivision (10), added subdivision (13), and rewriting the last paragraph. However, Session Laws 2000-146, s. 2.1, repealed Session Laws 2000-67, s. 7.2(b), effective on and after July 1, 2000, and thus the amendment was not given effect .

Session Laws 2000-146, s. 3, effective on and after July 1, 2000, added subsections (b) and (c), and designated the existing provisions as subsection (a); and in subsection (a), rewrote the first sentence, substituted "Par value" for "Face value" in subdivision (a)(3), deleted subdivision (a)(4), pertaining to market value, rewrote subdivision (a)(10), added subdivision (a)(13), and deleted the former last sentence, establishing a penalty.

§ 124-4: Repealed by Session Laws 2000-146, s. 4, effective December 1, 2000.

§ 124-5. Approval of encumbrance on State's interest in corporations.

(a) No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State.

(b) No State-owned railroad company shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Board of Directors of that corporation. The president or other chief officer of the State-owned railroad company shall report any acquisitions and dispositions in accordance with G.S. 124-3(10). (1925, c. 157, s. 5; 1981 (Reg. Sess., 1982), c. 1372, s. 5; 1983, c. 905, ss. 10, 11; 1985, c. 792, ss. 13.25, 13.26; 2000-146, s. 5.)

Effect of Amendments. — Session Laws 2000-146, s. 5, effective December 1, 2000, designated the existing paragraph as present subsection (a) and added subsection (b).

§ 124-5.1. State use of North Carolina Railroad dividends.

(a) Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company received by the State shall be applied to reduce the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Any dividends of the North Carolina Railroad Company received by the State shall be used by the Department of Transportation for the improvement of the property of the North Carolina Railroad Company as recommended and approved by the Board of Directors of the North Carolina Railroad Company.

(b) Effective January 1, 2000, interest shall not be accrued or otherwise charged on the remaining balance of the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Interest accrued on those obligations relating to periods prior to January 1, 2000, shall be deemed paid and contributed by the State to the capital of the North Carolina Railroad Company. (2000-67, s. 7.2(a).)

Editor's Note. — Session Laws 2000-67, s. 28.5, made this section effective July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

§§ 124-8 through 124-10: Reserved for future codification purposes.

Article 2.

State-Owned Railroad Company.

§ 124-11. Definition.

As used in this Chapter, the term "State-Owned Railroad Company" shall mean a railroad company in which the State owns all of the voting stock.

Cross References. — As to the Future of the North Carolina Railroad Study Commission, see §§ 120-245 to 120-255.

Editor's Note. — Session Laws 2000-146, s. 14, made this Article effective December 1, 2000.

§ 124-12. Powers of a State-owned railroad company.

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. — A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. — A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). The procedures of Article 2 of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain under this subdivision. (2000-146, s. 7.)

§ 124-13. Effect on State-owned railroad company charter.

Nothing in this Chapter repeals or modifies any State-owned railroad company charter or limits the rights of the shareholders of the company as provided in Chapter 55 of the General Statutes. (2000-146, s. 7.)

Chapter 126.

State Personnel System.

Article 1.

State Personnel System Established.

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

CASE NOTES

The superior court properly determined that it had subject matter jurisdiction where plaintiff sought injunctive relief ordering his reinstatement to the "same or similar position," a matter on which § 126-34.1 does not specifically authorize appeal; the State Personnel Act does not place jurisdiction over this matter with the State Personnel Commission. Hodge v. North Carolina DOT, — N.C. App. —, 528 S.E.2d 22, 2000 N.C. App. LEXIS 334 (2000).

Quoted in Buser v. Southern Food Serv., 73 F. Supp. 2d 556 (M.D.N.C. 1999).

§ 126-2. State Personnel Commission.

(a) There is hereby established the State Personnel Commission (hereinafter referred to as "the Commission").

(b) The Commission shall consist of nine members, appointed as follows:

(1) Two members shall be attorneys licensed to practice law in North Carolina appointed by the General Assembly, one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate.

The initial two attorney members appointed under this subdivision shall serve terms expiring June 30, 2004; the terms of subsequent appointees shall be six years.

(2) Two persons from private business or industry appointed by the Governor, both of whom shall have a working knowledge of, or practical experience in, human resources management. The initial members appointed under this subdivision shall serve terms expiring June 30, 2003; the terms of subsequent appointees shall be six years.

(3) Two State employees subject to the State Personnel Act serving in nonexempt positions, appointed by the Governor. One employee shall serve in a State government position having supervisory duties, and one employee shall serve in a nonsupervisory position. Neither employee may be a human resources professional. The Governor shall consider nominations submitted by the State Employees Association of North Carolina. The initial members appointed under this subdivision shall serve terms expiring June 30, 2001; the terms of subsequent appointees shall be six years.

(4) Two local government employees subject to the State Personnel Act appointed by the Governor upon recommendation of the North Carolina Association of County Commissioners, one a nonsupervisory local employee and one a supervisory local employee. Neither local government employee may be a human resources professional. The initial members appointed under this subdivision shall serve terms expiring June 30, 2003; the terms of subsequent appointees shall be for six years.

(5) One member of the public at large appointed by the Governor. The initial member appointed under this subdivision shall serve for a term expiring June 30, 2001; the terms of subsequent appointees shall be for six years.

(c) Members of the Commission may serve no more than two consecutive terms. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Vacancies in appointments made by the Governor occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(d) No member of the Commission may serve on a case where there would be a conflict of interest. The appointing authority may at any time remove any Commission member for cause.

(e) Members of the Commission who are State or local government employees subject to the State Personnel Act shall be entitled to administrative leave without loss of pay for all periods of time required to conduct the business of the Commission.

(f) Six members of the Commission shall constitute a quorum.

(g) The Governor shall designate one member of the Commission as chair.

(h) The Commission shall meet quarterly, and at other times at the call of the chair. (1965, c. 640, s. 2; 1975, c. 667, ss. 2-4; 1989, c. 540; 1998-181, s. 1(a), (b); 2000-140, s. 29.)

Effect of Amendments. — Session Laws 2000-140, s. 29, effective July 21, 2000, deleted "seven" following subdivision (b)(5).

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

CASE NOTES

Applied in Hodge v. North Carolina DOT, — N.C. App. —, 528 S.E.2d 22, 2000 N.C. App. LEXIS 334 (2000).

Quoted in Buser v. Southern Food Serv., 73 F. Supp. 2d 556 (M.D.N.C. 1999).

OPINIONS OF ATTORNEY GENERAL

The State Personnel Commission has the statutory authority, under this section and § 126-82, to promulgate a rule regarding the application of a veteran's preference in the form of an additional ten points to be awarded where a numerically scored examination is used as part of the selection process. See opinion of Attorney General to Mr. Ronald Penny, State Personnel Director, Office of State Personnel, 1998 N.C.A.G. 10 (2/12/98).

§ 126-5. Employees subject to Chapter; exemptions.

(a) The provisions of this Chapter shall apply to:

(1) All State employees not herein exempt, and

(2) To all employees of the following local entities:

a. Area mental health, developmental disabilities, and substance abuse authorities.
b. Local social services departments.
c. Local public health departments.
d. Local emergency management agencies that receive federal grant-in-aid funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.

(3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine.

(b) As used in this section:

(1) "Exempt position" means an exempt managerial position or an exempt policymaking position.
(2) "Exempt managerial position" means a position delegated with significant managerial or programmatic responsibility that is essential to the successful operation of a State department, agency, or division, so that the application of G.S. 126-35 to an employee in the position would cause undue disruption to the operations of the agency, department, institution, or division.
(3) "Exempt policymaking position" means a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division, so that a loyalty to the Governor or other elected department head in their respective offices is reasonably necessary to implement the policies of their offices. The term shall not include personnel professionals.
(4) "Personnel professional" means any employee in a State department, agency, institution, or division whose primary job duties involve administrative personnel and human resources functions for that State department, agency, institution, or division.

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) A State employee who is not a career State employee as defined by this Chapter.
(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.
(3) Employees in exempt policymaking positions designated pursuant to G.S. 126-5(d).
(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity.

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.
(2) Officers and employees of the Judicial Department.
(3) Officers and employees of the General Assembly.
(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.
(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
(8) Instructional and research staff, physicians, and dentists of The University of North Carolina.
(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.
(10) Repealed by Session Laws 1991, c. 84, s. 1.
(11) North Carolina School of Science and Mathematics" employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).
(12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g)(1) and G.S. 104G-5(g)(2).
(13) Employees of the North Carolina Hazardous Waste Management Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and G.S. 130B-6(g)(2).
(14) Employees of the North Carolina State Ports Authority.
(15) Employees of the North Carolina Global TransPark Authority.
(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.
(17) The executive director of the independent staff of the Information Resources Management Commission established under G.S. 143B-472.41A.
(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.
(20) Employees of the North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes.

(c2) The provisions of this Chapter shall not apply to:
(1) Public school superintendents, principals, teachers, and other public school employees.
(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 41.
(3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and employees of the Community Colleges System Office whose salaries are fixed by the State Board of Community Colleges in accordance with the provisions of G.S. 115D-3.

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Health and Human Services, and any other State department, agency or institution, whose salaries shall be set in the same manner as set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) Repealed by Session Laws 1993, c. 321, s. 145(b).

(c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c6) Article 15 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c7) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to exempt managerial positions.

(c8) Except as to the provisions of Articles 5, 6, 7, and 14 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Employees of the University of North Carolina Health Care System.

(2) Employees of the University of North Carolina Hospitals at Chapel Hill, as may be provided pursuant to G.S. 116-37(a)(4).

(3) Employees of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill as may be provided pursuant to G.S. 116-37(a)(4).

(4) Employees of the Medical Faculty Practice Plan, a division of the School of Medicine of East Carolina University.

(d)(1) Exempt Positions in Cabinet Department. — The Governor may designate a total of 100 exempt policymaking positions throughout the following departments:

a. Department of Administration;
b. Department of Commerce;
c. Department of Correction;
d. Department of Crime Control and Public Safety;
e. Department of Cultural Resources;
f. Department of Health and Human Services;
g. Department of Environment and Natural Resources;
h. Department of Revenue;
i. Department of Transportation; and
j. Department of Juvenile Justice and Delinquency Prevention.

The Governor may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in each cabinet department listed above in this sub-subdivision, not to exceed 30 positions in each department.

(2) Exempt Positions in Council of State Departments and Offices. — The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this sub-subdivision shall be limited to 20 exempt policymaking positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 20 positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. — The Governor, elected department head, or State Board of Education may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of

Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional positions to be designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

(3) Letter. — These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. — In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to the Governor.

(5) Creation, Transfer, or Reorganization. — The Governor, elected department head, or State Board of Education may designate as exempt a position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. — Subsequent to the designation of a position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor, by an elected department head, or by the State Board of Education in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. — Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision.

(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in subsection (c)(1) above but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position.

(f) A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is necessary to meet the requirements of subsection (e) of this section, a department head may use salary reserve funds authorized for his department.

(g) No employee shall be placed in an exempt position without 10 working days prior written notification that such position is so designated. A person applying for a position that is designated as exempt must be notified in writing at the time he makes the application that the position is designated as exempt.

(h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982; 1971, c. 1025, s. 2; 1973, c. 476, s. 143; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5; 1979, 2nd Sess., c. 1137, s. 40; 1983, c. 717, s. 41; c. 867, s. 2; 1985, c. 589, s. 38; c. 617, s. 1; c. 757, s. 206(c); 1985 (Reg. Sess., 1986), c. 955, s. 43; c. 1014, ss. 41, 235; c. 1022, s. 9; 1987, c. 320, s. 4; c. 395, s. 1; c. 809, s. 1; c. 850, s. 19; 1987 (Reg. Sess., 1988), c. 1064, s. 3; 1989, c. 168, s. 9; c. 236, s. 3; c. 484; c. 727, s. 218(85); c. 751, s. 7(13); 1991, c. 65, s. 2; c. 84, ss. 1, 2; c. 354, s. 3; c. 749, s. 4; 1991 (Reg. Sess., 1992), c. 879, s. 5; c. 959, s. 85; 1993, c. 145, s. 1; c. 321, s. 145(b); c. 553, ss. 39, 40; 1993 (Reg. Sess., 1994), c. 777, s. 4(g); 1995, c. 141, ss. 3, 5; c. 393, s. 1; 1995 (Reg. Sess., 1996), c. 690, s. 15; 1997-443, ss. 11A.118(a), 11A.119(a), 22.2(b); 1997-520, s. 3; 1998-212, s. 11.8(b); 1999-84, s. 21; 1999-253, s. 1; 1999-434, s. 25; 2000-137, s. 4(nn); 2000-147, s. 4; 2000-148, s. 3.)

Editor's Note. —

Subdivision (c1)(20) was enacted as subdivision (c1)(18) by Session Laws 2000-148, s. 3, and redesignated as subdivision (c1)(20) at the direction of the Revisor of Statutes.

Section 143B-472.41A, referred to in subdivision (c1)(17), was repealed by Session Laws 2000-174, s. 1, effective September 1, 2000. As to the Information Resource Management Commission, see now § 147-33.78.

Session Laws 2000-147, s. 8(a)-(c), provides:

"(a) Interpretation of Act.--The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

"(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

"(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Section 143B-472.41A, referred to in subdivision (c1)(17), was repealed by Session Laws 2000-174, s. 1, effective September 1, 2000. As

to the Information Resource Management Commission, see now § 147-33.78.

Session Laws 2000-147, s. 8(d), contains a severability clause.

Effect of Amendments. —

Session Laws 2000-137, s. 4(nn), effective July 20, 2000, added subdivision (d)(1)j. and made minor stylistic changes.

Session Laws 2000-147, s. 4, effective August 2, 2000, added subdivisions (c1)(18) and (19).

Session Laws 2000-148, s. 3, effective July 1, 2000, added subdivision (c1)(18) (now subdivision (c1)(20)).

CASE NOTES

Meaning of "Department Head," in Subsection (e). — The legislative intent, as to the meaning of the term "department head" in subsection (e), is the official who has executive and managerial authority over the department in which an exempt policymaking position is designated, including cabinet department heads, and while the term clearly refers to elected department heads, it does not refer to the Governor. Carrington v. Brown, — N.C. App. —, 525 S.E.2d 230, 2000 N.C. App. LEXIS 104 (2000).

Authority As "Department Head" Under Subsection (e). — Because the chairman of the Employment Security Commission (ESC) had the authority to staff and make personnel decisions in the ESC, she had the authority as a "department head", pursuant to subsection (e) of this section, to dismiss plaintiff from his exempt policymaking position within the ESC. Carrington v. Brown, — N.C. App. —, 525 S.E.2d 230, 2000 N.C. App. LEXIS 104 (2000).

Application of Veterans Preference. — Pursuant to § 126-83, employees of the System designated in subdivision (a)(2) of this section are expressly excluded from the Preference afforded by § 126-80 but, if qualified under § 128-15, are entitled to the veterans preference thereunder applicable to all employees of State departments, agencies and institutions. Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772 (1999), cert. denied, 351 N.C. 122, — S.E.2d — (1999).

Stated in Hodge v. North Carolina DOT, — N.C. App. —, 528 S.E.2d 22, 2000 N.C. App. LEXIS 334 (2000).

Article 2.

Salaries, Promotions, and Leave of State Employees.

§ 126-7. Compensation of State employees.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 26.12(a)-(e), effective July 1, 2000, authorizes a salary increase on or after July 1, 2000, for all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund, unless otherwise provided by the act, pursuant to the Comprehensive Compensation System set forth in G.S. 126-7 and rules adopted by the State Personnel Commission, specificially, a career growth recognition award of 2% and a cost-of-living adjustment of 2.2%. Notwithstanding G.S. 126-7(c)(4a), any permanent full-time State employee whose salary is set in accordance with the State Personnel Act and whose salary is at the top of the salary range or within 2% of the top is to receive a one-time bonus of 2% less the career growth recognition award. Except as otherwise provided in the act, salaries in effect June 30, 2000, for permanent full-time State officials and persons in exempt positions recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly are to be increased 4.2%, commencing July 1, 2000. The salaries in effect June 30, 2000, for all permanent part-time State employees are to be increased on and after July 1, 2000, pro rata. The Director of Budget may allocate sufficient funds to allow a salary increase in accordance with the section. Within regular Executive Budget Act procedures, State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availabilty of funds, by pro rata amounts of 4.2%, commencing July 1, 2000.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

OPINIONS OF ATTORNEY GENERAL

The intent behind the 1998 amendments was that affected employees would receive the 1998 COLA of 1%, based on their June 30, 1998, salary, that the COLA would become effective July 1, 1998, and that employees would receive retroactive pay to that date. See opinion of Attorney General to Mr. Ronald G. Penny State Personnel Director Office of State Personnel, 1998 N.C.A.G. 52 (12/3/98).

§ 126-7.1. Posting requirement; State employees receive priority consideration; reduction-in-force rights; Work First hiring.

OPINIONS OF ATTORNEY GENERAL

A university may restrict the applicant pool for a vacant position to employees currently employed within the individual department in which the vacancy occurs, as long as it makes it clear that it is not receiving or considering any applications from outside the department and does not, in fact, receive or consider any outside applications. See opinion of Attorney General to Mr. Ronald Penny, State Personnel Director, Office of State Personnel, 1998 N.C.A.G. 21 (5/1/98).

Article 6.

Equal Employment and Compensation Opportunity; Assisting in Obtaining State Employment.

§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.

CASE NOTES

Quoted in Metts v. North Carolina Dep't of Revenue, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 2567 (E.D.N.C. January 9, 2000).

Article 7.

The Privacy of State Employee Personnel Records.

§ 126-24. Confidential information in personnel files; access to such information.

OPINIONS OF ATTORNEY GENERAL

Pursuant to § 147-64.13, the provisions of § 147-64.7(a)(1) supersede the provisions of this section to the extent they conflict. Specifically, the Auditor's power to examine documents in the course of an authorized audit includes the power to examine confidential employee personnel files relevant to that audit without the consent of the employee or his employer. See opinion of Attorney General to The Honorable Ralph Campbell, Jr., State Auditor, 1999 N.C.A.G. 8 (3/5/99).

For a discussion of legal impediments which prohibit employers from disclosing personal information about their employees, see opinion of Attorney General to Bryan E. Beatty, Inspector General, North Carolina Department of Justice, 1998 N.C.A.G. 49 (12/1/98).

Article 8.

Employee Appeals of Grievances and Disciplinary Action.

§ 126-34.1. Grounds for contested case under the State Personnel Act defined.

CASE NOTES

The superior court properly determined that it had subject matter jurisdiction where the plaintiff sought injunctive relief ordering his reinstatement to the "same or similar position," a matter on which this section does not specifically authorize appeal; the State Personnel Act does not place jurisdiction over this matter with the State Personnel Commission. Hodge v. North Carolina DOT, — N.C. App. —, 528 S.E.2d 22, 2000 N.C. App. LEXIS 334 (2000).

Quoted in Metts v. North Carolina Dep't of Revenue, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 2567 (E.D.N.C. January 9, 2000).

§ 126-35. Just cause; disciplinary actions for State employees.

(a) No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision. The State Personnel Commission may adopt, subject to the approval of the Governor, rules that define just cause.

(b) Notwithstanding any other provision of this Chapter, a reduction in pay or position which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this Article. Disciplinary actions, for the purpose of this Article, are those actions taken in accordance with the disciplinary procedures adopted by the State Personnel Commission and specifically based on unsatisfactory job performance, unacceptable personal conduct or a combination of the two.

(c) For the purposes of contested case hearings under Chapter 150B, an involuntary separation (such as a separation due to a reduction in force) shall be treated in the same fashion as if it were a disciplinary action.

(d) In contested cases conducted pursuant to Chapter 150B of the General Statutes, the burden of showing that a career State employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause rests with the department or agency employer. (1975, c. 667, s. 10; 1989 (Reg. Sess., 1990), c. 1025, s. 2; 1991, c. 65, s. 7; c. 354, s. 5; c. 722, s. 1; 2000-190, s. 13.)

Effect of Amendments. — Session Laws 2000-190, s. 13, effective January 1, 2001, and applicable to contested cases commenced on or after that date, added subsection (d).

CASE NOTES

"Just Cause." —
The trial court correctly determined that the record lacked substantial evidence to support the Personnel Commission's conclusion that the Department of Correction had not met its burden of showing just cause for terminating correctional officer; said officer's behavior in leaving his post without authorization and failing to remain alert while on duty did not only constitute "unsatisfactory job performance" but fell squarely within the category of "unacceptable personal conduct" for which a DOC employee may be terminated without any prior warning. North Carolina Dep't of Cor. v. McNeely, 135 N.C. App. 587, 521 S.E.2d 730 (1999).

§ 126-37. Personnel Commission to review Administrative Law Judge's recommended decision and make final decision.

CASE NOTES

Agency Decision Upheld Although Director Reviewed Own Employment Action. — Where substantial evidence existed to support an agency finding that petitioner voluntarily resigned and was not fired, the court upheld the decision as rendered properly pursuant to this section, and not in violation of petitioner's due process rights, even though the agency director/final decision-maker who disregarded the State Personnel Commission's recommendation that employee be reinstated was, in fact, evaluating factual issues involving his own testimony and credibility. Hearne v. Sherman, 350 N.C. 612, 516 S.E.2d 864 (1999).

Cited in Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772 (1999), cert. denied, 351 N.C. 122, — S.E.2d — (1999); Hodge v. North Carolina DOT, — N.C. App. —, 528 S.E.2d 22, 2000 N.C. App. LEXIS 334 (2000).

Article 13.

Veteran's Preference.

§ 126-80. Declaration of policy.

CASE NOTES

Construction with Other Sections. — Pursuant to § 126-83, employees of the System designated in § 126-5(a)(2) are expressly excluded from the preference afforded by this section but, if qualified under § 128-15, are entitled to the veterans preference thereunder applicable to all employees of State departments, agencies and institutions. Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772 (1999), cert. denied, 351 N.C. 122, — S.E.2d — (1999).

§ 126-82. State Personnel Commission to provide for preference.

OPINIONS OF ATTORNEY GENERAL

The State Personnel Commission has the statutory authority, under this section and § 126-4, to promulgate a rule regarding the application of a veteran's preference in the form of an additional ten points to be awarded where a numerically scored examination is used as part of the selection process. See opinion of Attorney General to Mr. Ronald Penny, State Personnel Director, Office of State Personnel, 1998 N.C.A.G. 10 (2/12/98).

§ 126-83. Exceptions.

CASE NOTES

Application of Veterans Preference. — Pursuant to this section, employees of the System designated in § 126-5(a)(2) are expressly excluded from the preference afforded by § 126-80 but, if qualified under § 128-15, are entitled to the veterans preference thereunder applicable to all employees of State departments, agencies and institutions. Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772 (1999), cert. denied, 351 N.C. 122, — S.E.2d — (1999).

Chapter 127A.

Militia.

Article 15.

North Carolina National Guard Tuition Assistance Act of 1975.

§ 127A-193. Benefit.

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed two thousand dollars ($2,000) per academic year to qualifying members of the North Carolina national guard. Benefits shall be payable for a period of one academic year at a time, renewable at the option of the Secretary for a maximum of eight thousand dollars ($8,000). (1975, c. 917, s. 5; 1977, c. 228, s. 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 99, 100; 1993 (Reg. Sess., 1994), c. 769, s. 22.3; 2000-67, s. 18.)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 18, effective July 1, 2000, substituted "two thousand dollars ($2,000)" for "one thousand dollars ($1,000)" and "eight thousand dollars ($8,000)" for "four thousand dollars ($4,000)."

Chapter 128.

Offices and Public Officers.

Article 3.

Retirement System for Counties, Cities and Towns.

ARTICLE 1.

General Provisions.

§ 128-15. Employment preference for veterans and their spouses or surviving spouses.

CASE NOTES

Construction with Other Sections. — Pursuant to § 126-83, employees of the System designated in § 126-5(a)(2) are expressly excluded from the preference afforded by § 126-80 but, if qualified under this section, are entitled to the veterans preference thereunder applicable to all employees of State departments, agencies and institutions. Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772 (1999), cert. denied, 351 N.C. 122, — S.E.2d — (1999).

ARTICLE 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

CASE NOTES

Interest Accrual and Compounding. — Consistent with the purposes of § 135-1(19) and subdivision (18) of this section, underpayments were found to accrue interest from the date they became due. Furthermore, court found that statutes entitled beneficiaries to interest, not only on the principle due, but also on the accrued or earned interest. Faulkenbury v. Teachers' & State Employees' Retirement Sys., 133 N.C. App. 587, 515 S.E.2d 743 (1999), cert. denied, 351 N.C. 102, — S.E.2d — (1999).

§ 128-27. 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 one day 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 fireman, he shall have attained the age of 55 years and have at least five years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Repealed by Session Laws 1971, c. 325, s. 12.

(4) Any member who was in service October 8, 1981, who had attained 60 years of age, 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 one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(5) Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, 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 one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.

(a1) Early Service Retirement Benefits. — Any member may retire and receive a reduced retirement allowance 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 one day 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 50 years and have at least 20 years of creditable service.

(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 (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 (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(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 (⅓ 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 (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess

of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(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 (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-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 (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed police-

men 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 (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (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 Allowance of Members Retiring on or after July 1, 1978, but prior to July 1, 1983. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1978, but prior to July 1, 1983, 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 (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).

(b7) Service Retirement Allowances of Members Retiring on or after July 1, 1983, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1983, but prior to July 1, 1985, 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-seven one-hundredths percent (1.57%) 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 (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).

(b8) Service Retirement Allowance of Law Enforcement Officers Retiring on or after January 1, 1986, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after January 1, 1986, but before July 1, 1988, a member who is a law enforcement officer or an eligible former law enforcement officer shall receive the following service retirement allowance:

(1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) 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 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (⅓% of 1) for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

(1) If the member's service retirement date occurs on or after his 65th birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
   b. Such allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty-hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
   b. Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b) and (3).

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.
   b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.
   b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1994, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1995 but before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b15)(1)a. reduced by one-third of one percent (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 the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b15)(2)a. but shall be reduced by one-quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. but reduced by the sum of five-twelfths of one percent (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 the month the member would have attained his 60th birthday, plus one-quarter of one percent (1/4 of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b15)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b16) Service Retirement Allowance of Member Retiring on or after July 1, 1997, but before July 1, 1998. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 1998, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b16)(1)a., reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month the coincident with or next following the month the member would have attained his 55th birthday; or
2. The service retirement allowance as computed under G.S. 128-27(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement office or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b16)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. but reduced by the sum of five-twelfths of one percent (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 the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by with his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b16)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b17) Service Retirement Allowance of Member Retiring on or After July 1, 1998, but before July 1, 2000. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1998, but before July 1, 2000, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-seven hundredths percent (1.77%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b17)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-seven hundredths percent (1.77%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b17)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. but reduced by the sum of five-twelfths of one percent (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 the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th

birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b17)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b18) Service Retirement Allowance of Member Retiring on or After July 1, 2000. Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-eight hundredths percent (1.78%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b18)(1)a. reduced by one-third of one percent (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 the month the member would have attained his 55th birthday;

2. The service retirement allowance as computed under G.S. 128-27(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-eight hundredths percent (1.78%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b18)(2)a. but shall be reduced by one-quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b18)(2)a. but reduced by the sum of five-twelfths of one percent (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 the month the member would have attained his 60th birthday, plus one-quarter of one percent (1/4 of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 128-27(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b18)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit 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 one day nor 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.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer or a fireman as defined in G.S. 58-86-25 or rescue squad worker as defined in G.S. 58-86-30 and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, effective April 1, 1991, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and
(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(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 (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.

The provisions of this subdivision shall not apply to beneficiaries of the Law Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(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.

(3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an 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. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(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.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee other than as a law enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership

until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this section. Any beneficiary as hereinbefore described who becomes employed as a law enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this section.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(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 the date of termination of service, 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. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

(f1) Notwithstanding the foregoing provisions, upon or after retirement any member who was a uniformed fireman and any surviving beneficiary of a member who was a uniformed fireman, shall upon submission of an application, be paid the sum of accumulated contributions, with regular interest thereon, made under those provisions of G.S. 128-30(b)(1) that applied from July 1, 1965, through June 30, 1971, to the extent of the contributions required of the member that were in excess of the contributions required of other members of the Local Governmental Employees' Retirement System covered under the Social Security Act as was from time to time in effect; provided that, the return of contributions shall be payable only if the contributions did not increase the retirement allowance of the member or surviving beneficiary under the provisions of this Chapter.

(f2) Expired.

(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, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide 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 nomination. Any member having elected Options two, three, 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, but prior to July 1, 1993. — 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.

Option five. For Members Retiring prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option two or Option three, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

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.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree 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 retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree 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 such payment falls due, otherwise to the retiree's legal representative.

(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:

Period in Which Benefits Commenced	Percentage
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%
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:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%

Increase In Index	*Increase In Allowance*
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 (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 greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2;

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 the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

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, but before January 1, 1987, 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 age 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.

(*l*1) Death Benefit Plan for Law Enforcement Officers. — Under all requirements and conditions as otherwise provided for in subsection (*l*), except for the requirement that the provisions are effective only after an agreement has been executed by the employer and the Director of the Retirement System, all law enforcement officers who are members of the Retirement System shall participate and be eligible for group life insurance benefits under the Plan, and employers shall fund the cost of these benefits.

(*l*2) Death Benefit for Retired Members. — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(*l*3) Death Benefit for Retired Members. — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(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)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or

b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b18)(1)b. or G.S. 128-27(b18)(2)c., notwithstanding the requirement of obtaining age 50.

(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.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (*l*) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase.

(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:

Year(s) in Which Benefits Commenced	*Percentage*
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 (21/2%) 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:

Period in Which Benefits Commenced	*Percentage*
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.

(z) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary as of July 1, 1983, which shall become payable on July 1, 1984, shall be three and eight-tenths percent (3.8%) as provided in G.S. 128-27(k) plus an additional four and two-tenths percent (4.2%) to a total of eight percent (8%). The provision 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.

(z1) Notwithstanding the foregoing provisions, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(aa) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable on allowances in effect on June 30, 1985.

(bb) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(cc) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(dd) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(ee) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(ff) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(gg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(hh) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ii) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(jj) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992. — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(kk) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(*ll*) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(mm) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1993 General Assembly in 1994.

(nn) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by two and eight-tenths percent (2.8%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of two and eight-tenths percent (2.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(oo) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(pp) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1995 General Assembly.

(qq) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by seven-tenths of one percent (0.7%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of seven-tenths of one percent (0.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(rr) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 128-27(k). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ss) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(tt) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997. — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly.

(uu) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(vv) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1998. — From and after July 1, 1998, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1998, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1998. This allowance shall be calculated on the allowance payable and in effect on June 30, 1998, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly.

(ww) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by one percent (1.0%) of the allowance payable on June 1, 1999, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of one percent (1.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(xx) Increase in Allowance as to Persons on RetirementRolls as of June 1, 2000. — From and after July 1, 2000, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2000, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1,2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1999 General Assembly, 2000 Regular Session.

(yy) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on June 1, 2000, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000. (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; c. 975, s. 2; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1284, ss. 1, 2; 1983, c. 467; c. 761, ss. 226, 227; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1044; c. 1049, ss. 1-3; c. 1086; 1985, c. 138; c. 348, s. 2; c. 479, s. 196(i)-(n); c. 520, s. 2; c. 649, ss. 8, 10; c. 751, ss. 1-4, 6; c. 791, s. 56; 1985 (Reg. Sess., 1986), c. 1014, s. 49(d); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(c), 37(b); c. 824, s. 2; 1987 (Reg. Sess., 1988), c. 1061, s. 2; c. 1086, s. 22(c); c. 1108, s. 3; c. 1110, ss. 4-7; 1989, c. 717, ss. 13, 13.1; c. 731, s. 2; c. 752, s. 41(c); c. 792, ss. 3.4-3.6; 1989 (Reg. Sess., 1990), c. 1077, ss. 13-16; c. 1080; 1991, c. 636, s. 20(a); 1991 (Reg. Sess., 1992), c. 766, s. 1; c. 900, ss. 52(e)-(g), 53(a); c. 929, s. 1; c. 1030, s. 51.1; 1993, c. 321, ss. 74(b), 74.1(c), (d); c. 531, s. 3; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(b), 7.30(c), 7.30(d), 7.30(l); 1995, c. 507, ss. 7.22(e), (f), 7.23(c), (d), 7.23A(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(d); 1997-443, s. 33.22(g)-(j); 1998-153, s. 21(d)-(h); 1998-212, ss. 28.26(b), 28.27(e), (f); 1999-237, s. 28.23(d); 2000-67, ss. 26.20(g)-(j).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 26.20(g)-(j), effective July 1, 2000, in subsection (b17), substituted "After July 1, 1998, but Before July 1, 2000" for "After July 1, 1998" and inserted "but before July 1, 2000"; added subsections (b18), (xx) and (yy); and substituted "G.S. 128-27(b18)(1)b. or G.S. 128-27(b18)(2)c." for "G.S. 128-27(b17)(1)b. or G.S. 128-27(b17)(2)c." in subdivision (m)(1)b.

Chapter 130A.
Public Health.

Article 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

§ 130A-5.1. State health standards.

(a) The Secretary shall adopt measurable standards and goals for community health against which the State's actions to improve the health status of its citizens will be measured. The Secretary shall report annually to the General Assembly upon its convening or reconvening and to the Governor on all of the following:

(1) How the State compares to national health measurements and established State goals for each standard. Comparisons shall be reported using disaggregated data for health standards.
(2) Steps taken by State and non-State entities to meet established goals.
(3) Additional steps proposed or planned to be taken to achieve established goals.

(b) The Secretary may coordinate and contract with other entities to assist in the establishment of standards and preparation of the report. The Secretary may use resources available to implement this section. (2000-67, s. 11.)

Editor's Note. — Session Laws 2000-67, s. 11, made this section effective October 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Article 1A.

Commission for Health Services.

§ 130A-29. Commission for Health Services — Creation, powers and duties.

(a) The Commission for Health Services is created with the authority and duty to adopt rules to protect and promote the public health.

(b) The Commission is authorized to adopt rules necessary to implement the public health programs administered by the Department as provided in this Chapter.

(c) The Commission shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.
(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o).
(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522.
(4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.
(5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.
(5a) Establishing eligibility standards for participation in Department reimbursement programs.
(6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable toilets.
(7) Establishing statewide health outcome objectives and delivery standards.
(8) Establishing permit requirements for the sanitation of premises, utensils, equipment, and procedures to be used by a person engaged in tattooing, as provided in Part 11 of Article 8 of this Chapter.
(9) Implementing immunization requirements for adult care homes as provided in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

(d) The Commission is authorized to create:

(1) Metropolitan water districts as provided in G.S. 162A-33;
(2) Sanitary districts as provided in Part 2 of Article 2 of this Chapter; and
(3) Mosquito control districts as provided in Part 2 of Article 12 of this Chapter.

(e) Rules adopted by the Commission shall be enforced by the Department. (1973, c. 476, s. 123; 1975, c. 19, s. 57; c. 694, s. 6; 1979, c. 41, s. 1; 1981, c. 614, s. 9; 1983, c. 891, s. 15; 1983 (Reg. Sess., 1984), c. 1022, s. 5; 1989, c. 727, ss. 175, 176; 1989 (Reg. Sess., 1990), c. 1004, s. 50; c. 1075, s. 1; 1991, c. 548, s. 2; 1993, c. 321, s. 274; 1993 (Reg. Sess., 1994), c. 670, s. 3; 2000-112, s. 6.)

Editor's Note. —

Session Laws 2000-19, s. 19, effective June 26, 2000, authorizes the Commission on Health Services to adopt a rule that requires a person who generates wastes at a dry-cleaning facility or wholesale distribution facility, other than wastewater generated from dry-cleaning processes, which contain solvents perchloroethylene, F-1,1,3, or 1,1,1 trichloroethane to deliver the wastes to a facility legally authorized to manage or recycle hazardous wastes containing these solvents.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Session Laws 2000-19, s. 21, directs the Secretary of Environment and Natural Resources to study dry-cleaning processes and equipment, specifically (1) to identify alternative dry-cleaning processes and equipment in use or under development, (2) to identify historical trends in the use of these processes and equipment, and (3) to evaluate the benefits and costs of, as well as the feasibility of implementing and installing, these processes and equipment. If the Secretary finds that there are significant potential obstacles to the implementation of beneficial alternative dry-cleaning processes and equipment, the Secretary is to recommend to the General Assembly specific regulatory and nonregulatory policy measures to promote the increased use of such alternative processes and equipment by the State's dry-cleaning industry. The Secretary is to issue an interim report by November 12, 2000, and a final report by September 1, 2001, to the Environmental Review Commission, with findings, recommendations, and legislative proposals.

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-112, s. 5, directs the Department of Health and Human Services to make available to nursing homes and adult care homes educational and informational materials pertaining to vaccinations required under the act.

Effect of Amendments. — Session Laws 2000-112, s. 6, effective July 14, 2000, added subdivision (c)(9).

Article 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-37. District board of health.

OPINIONS OF ATTORNEY GENERAL

A county commissioner member of a district board of health may serve more than three consecutive three-year terms on the board and is not subject to the same term limitations as other members of the board. See opinion of Attorney General to Hal G. Harrison Mitchell County Attorney, 1998 N.C.A.G. 40 (10/8/98).

Part 1B. Public Health Authorities Authorized.

§ 130A-45.7. Medical review committee.

CASE NOTES

Cited in Sharpe v. Worland, — N.C. App. —, 527 S.E.2d 75, 2000 N.C. App. LEXIS 269 (2000).

Article 4.

Vital Statistics.

§ 130A-101. Birth registration.

CASE NOTES

Unilateral Petition for Name Change Disallowed after Birth Certificate Entry. — Where unmarried parents executed an Affidavit of Paternity and entered respondent's name on the birth certificate as the father, court held that there was no authority, statutory or decisional, permitting petitioner to unilaterally change the name of her son, born out of wedlock and not yet legitimated, absent the father's consent. In re Crawford, 134 N.C. App. 137, 517 S.E.2d 161 (1999), distinquishing In re Dunston, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

Inquiry into Child's Best Interests Not Appropriate. — The fact that the General Assembly specifically required a "best interests of the child" inquiry in contexts such as termination of parental rights, child custody and placement, parental visitation rights, and even in the change in surname on a birth certificate following legitimization, yet failed to require such inquiry in connection with name changes under § 101-2 and subsection (f) of this section, was taken as clear evidence of its intent that no such inquiry was required in these contexts. In re Crawford, 134 N.C. App. 137, 517 S.E.2d 161 (1999).

§ 130A-118. Amendment of birth and death certificates.

CASE NOTES

Cited in In re Crawford, 134 N.C. App. 137, 517 S.E.2d 161 (1999).

Article 5.

Maternal and Child Health and Women's Health.

Part 1. In General.

§ 130A-125. Screening of newborns for metabolic and other hereditary and congenital disorders.

(a) The Department shall establish and administer a Newborn Screening Program. The program shall include, but shall not be limited to:

(1) Development and distribution of educational materials regarding the availability and benefits of newborn screening.

(2) Provision of laboratory testing.

(3) Development of follow-up protocols to assure early treatment for identified children, and the provision of genetic counseling and support services for the families of identified children.

(4) Provision of necessary dietary treatment products or medications for identified children as medically indicated and when not otherwise available.

(5) For each newborn, provision of physiological screening in each ear for the presence of permanent hearing loss.

(b) The Commission shall adopt rules necessary to implement the Newborn Screening Program. The rules shall include, but shall not be limited to, the conditions for which screening shall be required, provided that screening shall not be required when the parents or the guardian of the infant object to such screening. If the parents or guardian object to the screening, the objection shall be presented in writing to the physician or other person responsible for administering the test, who shall place the written objection in the infant's medical record.

(b1) The Commission for Health Services shall adopt temporary and permanent rules to include newborn hearing screening in the Newborn Screening Program established under this section.

(c) The Department may impose a fee for a laboratory test performed pursuant to this section by the State Public Health Laboratory. A fee for a test must be based on the actual cost of performing the test. Fees collected shall remain in the Department to be used to offset the cost of the Newborn Screening Program. (1991, c. 661, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 6; 1998-131, s. 13; 2000-67, s. 11.31(a).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 11.31(b), directs the Department of Health and Human Services, not later than March 1, 2001, to submit a progress report on the implementation of the newborn hearing screening program to the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources, and to the Fiscal Research Division. The report is to include findings and recommendations relating to: (1) availability and adequacy of screening and diagnostic equipment; (2) staff training; 3) data on the number of infants screened, the number who failed the hearing screening, and the number fitted for amplification; (4) the follow-up process for audiological management; (5) referral procedures for child service coordination and other early intervention services; and (6) outreach efforts to increase public awareness.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 11.31.(a), effective July 1, 2000, added subdivision (a)(5); and rewrote subsection (c).

Part 6. Adolescent Pregnancy Prevention Projects.

§ 130A-131.15. Department to establish program.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 5(v), as amended by Session Laws 2000-138, s. 16(b), effective July 1, 2000, directs the Department of Health and Human Services, Division of Public Health, in collaboration with local program administrators, the Adolescent Pregnancy Prevention Coalition of North Carolina, and other organizations to adopt guidelines for the administration of funds appropriated in the act for teen pregnancy prevention and for parenting programs. In awarding grants, the Department is to target counties with the highest teen pregnancy rates, increasingly higher teen pregnancy rates, high rates wihtin demographic subgroups, or greatest need for parenting programs. The Division is to encourage programs to implement best practice models. The Department is to issue an annual report on March 1 to specified House and Senate appropriations committees and the Fiscal Research Divison, which report is to include the program budget, a narrative describing each funded project, effectiveness of the program, and status of the evaluation.

Session Laws 2000-67, s. 11.40, purported to amend this section effective July 1, 2000, by rewriting it. Session Laws 2000-138, s. 16(a), effective July 1, 2000, repealed Session Laws 2000-67, s. 11.40.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual

provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Article 6.

Communicable Diseases.

Part 6. Rabies.

§ 130A-190. Rabies vaccination tags.

(a) A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." Dogs and cats shall wear rabies vaccination tags at all times. However, cats may be exempted from wearing the tags by local ordinance.

(b) Rabies vaccination tags, links and rivets may be obtained from the Department. The Secretary is authorized to establish by rule a fee for the rabies tags, links and rivets. Except as otherwise authorized in this section, the fee shall not exceed the actual cost of the rabies tags, links and rivets, plus transportation costs. The Secretary may increase the fee beyond the actual cost plus transportation, by an amount not to exceed five cents ($.05) per tag, to fund rabies education and prevention programs.

(c) The Department shall make available a special edition rabies tag to be known as the "I Care" tag. This tag shall be different in shape from the standard tag and shall carry the inscription "I Care" in addition to the information required by subsection (a) of this section. The Secretary is authorized to establish a fee for the "I Care" rabies tag equal to the amount set forth in subsection (b) of this section plus an additional fifty cents ($.50). The additional fifty cents ($.50) shall be credited to the Spay/Neuter Account established in G.S. 19A-62. (1935, c. 122, s. 6; 1941, c. 259, s. 5; 1959, c. 352; 1983, c. 891, s. 2; 1997-69, s. 1; 2000-163, s. 2.)

Effect of Amendments. — Session Laws 2000-163, s. 2, effective January 1, 2001, designated the existing paragraph as present subsections (a) and (b), and added subsection (c).

§ 130A-197. Infected dogs and cats to be destroyed; protection of vaccinated dogs and cats.

When the local health director reasonably suspects that a dog or cat has been exposed to the saliva or nervous tissue of a proven rabid animal or animal reasonably suspected of having rabies that is not available for laboratory diagnosis, the dog or cat shall be considered to have been exposed to rabies. A dog or cat exposed to rabies shall be destroyed immediately by its owner, the county Animal Control Officer or a peace officer unless the dog or cat has been vaccinated against rabies in accordance with this Part and the rules of the Commission more than three weeks prior to being exposed, and is given a booster dose of rabies vaccine within three days of the exposure. As an alternative to destruction, the dog or cat may be quarantined at a facility approved by the local health director for a period up to six months, and under reasonable conditions imposed by the local health director. (1935, c. 122, s. 14; 1953, c. 876, s. 10; 1983, c. 891, s. 2; 2000-163, s. 4.)

Effect of Amendments. — Session Laws 2000-163, s. 4, effective January 1, 2001, substituted "When the local health ... nervous tissue of a proven rabid" for "A dog or cat bitten by a proven rabid," substituted "diagnosis, the dog or cat shall be considered to have been exposed to rabies. A dog or cat exposed to rabies shall be destroyed" for "diagnosis shall be destroyed," substituted "prior to being exposed" for "prior to being bitten," substituted "three days of the exposure" for "three days of the bite" and added the last sentence.

Article 8.

Sanitation.

Part 6. Regulation of Food and Lodging Facilities.

§ 130A-250. Exemptions.

The following shall be exempt from this Part:

(1) Establishments that provide lodging described in G.S. 130A-248(a1) with four or fewer lodging units.

(2) Condominiums.

(3) **(Effective until July 1, 2001)** Establishments that prepare or serve food or provide lodging to regular boarders or permanent house guests only.

(3) **(Effective July 1, 2001)** Establishments that prepare or serve food or provide lodging to regular boarders or permanent houseguests only. However, the rules governing food sanitation adopted under G.S. 130A-248 apply to establishments that are not regulated under G.S. 130A-235 and that prepare or serve food for pay to 13 or more regular boarders or permanent houseguests who are disabled or who are 55 years of age or older. Establishments to which the rules governing food sanitation are made applicable by this subdivision that are in operation as of 1 July 2000 may continue to use equipment and construction in use on that date if no imminent hazard exists. Replacement equipment for these establishments shall comply with the rules governing food sanitation adopted under G.S. 130A-248.

(4) Private homes that occasionally offer lodging accommodations, which may include the providing of food, for two weeks or less to persons attending special events, provided these homes are not bed and breakfast homes or bed and breakfast inns.

(5) Private clubs.

(6) Curb markets operated by the State Agricultural Extension Service.

(7) Establishments that prepare or serve food or drink for pay no more frequently than once a month for a period not to exceed two consecutive days, including establishments permitted pursuant to this Part when preparing or serving food or drink at a location other than the permitted locations.

(8) Establishments that put together, portion, set out, or hand out only beverages that do not include those made from raw apples or potentially hazardous beverages made from raw fruits or vegetables, using single service containers that are not reused on the premises.

(9) Establishments where meat food products or poultry products are prepared and sold and which are under inspection by the North Carolina Department of Agriculture and Consumer Services or the United States Department of Agriculture.

(10) Markets that sell uncooked cured country ham or uncooked cured salted pork and that engage in minimal preparation such as slicing, weighing, or wrapping the ham or pork, when this minimal prepara-

§ 130A-2501(3) is set out twice. See notes.

tion is the only activity that would otherwise subject these markets to regulation under this Part.

(11) Establishments that only set out or hand out beverages that are regulated by the North Carolina Department of Agriculture and Consumer Services in accordance with Article 12 of Chapter 106 of the General Statutes.

(12) Establishments that only set out or hand out food that is regulated by the North Carolina Department of Agriculture and Consumer Services in accordance with Article 12 of Chapter 106 of the General Statutes. (1955, c. 1030, s. 4; 1957, c. 1214, s. 3; 1983, c. 884, ss. 1, 2; c. 891, s. 2; 1985 (Reg. Sess., 1986), c. 926; 1989, c. 551, s. 3; 1991, c. 733, s. 3; 1993, c. 262, s. 4; c. 513, s. 14; 1995, c. 123, s. 14; 1997-261, s. 86; 1999-13, s. 1; 1999-247, s. 5; 2000-82, s. 1.)

Subsection (3) Set Out Twice. The first version of subsection (3) is effective until July 1, 2001. The second version of subsection (3) is effective July 1, 2001.

Effect of Amendments. —

Session Laws 2000-82, s. 1, effective July 1, 2001, in subdivision (3), substituted "houseguests only" for "house guests only" in the first sentence and added the second, third and fourth sentences.

Article 9.

Solid Waste Management.

Part 1. Definitions.

§ 130A-290. Definitions.

Editor's Note. —

Session Laws 2000-19, s. 19, effective June 26, 2000, authorizes the Commission on Health Services to adopt a rule that requires a person who generates wastes at a dry-cleaning facility or wholesale distribution facility, other than wastewater generated from dry-cleaning processes, which contain solvents perchloroethylene, F-1,1,3, or 1,1,1 trichloroethane to deliver the wastes to a facility legally authorized to manage or recycle hazardous wastes containing these solvents.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Session Laws 2000-19, s. 21, directs the Secretary of Environment and Natural Resources to study dry-cleaning processes and equipment, specifically (1) to identify alternative dry-cleaning processes and equipment in use or under development, (2) to identify historical trends in the use of these processes and equipment, and (3) to evaluate the benefits and costs of, as well as the feasibility of implementing and installing, these processes and equipment. If the Secretary finds that there are significant potential obstacles to the implementation of beneficial alternative dry-cleaning processes and equipment, the Secretary is to recommend to the General Assembly specific regulatory and nonregulatory policy measures to promote the increased use of such alternative processes and equipment by the State's dry-cleaning industry. The Secretary is to issue an interim report by November 12, 2000, and a final report by September 1, 2001, to the Environmental Review Commission, with findings, recommendations, and legislative proposals.

Session Laws 2000-19, s. 20, contains a severability clause.

Part 2A. Nonhazardous Solid Waste Management.

§ 130A-309.12. Solid Waste Management Trust Fund.

Editor's Note. — Session Laws 1993, c. 471, s. 11, as amended by Session Laws 1998-24, s. 7, had provided that the repeal of subdivision (b)(4) would be effective July 1, 2002. Session Laws 2000-109, s. 9(a), effective July 13, 2000, amended Session Laws 1993, c. 471, s. 11, to delete the postponed date for this amendment. As to when an act takes effect absent specification of a date therein, see § 120-20.

§ 130A-309.29. Adoption of rules.

The Commission may adopt rules to implement the provisions of this Part pursuant to Article 2A of Chapter 150B of the General Statutes. (1991, c. 621, s. 12; 2000-189, s. 12.)

Effect of Amendments. — Session Laws 2000-189, s. 12, effective August 2, 2000, substituted "Article 2A" for "Article 2."

Part 2D. Management of Discarded White Goods.

§ 130A-309.81. (See Editor's Note) Management of discarded white goods; disposal fee allowed.

Editor's Note. — Session Laws 1993-471, s. 11, as originally enacted, had provided that the version of this section as amended by Session Laws 1993, c. 471, s. 6 (but subsequently repealed) would be effective July 1, 1998. Session Laws 1998-24, s. 11, extended this date to July 1, 2002, and Session Laws 2000-109, s. 9(a), effective July 13, 2000, deleted the postponed date for this amendment. The second version of this section, as set out in the main volume, appears to be the version that has been in effect since July 1, 1998.

§ 130A-309.82. (See Editor's Note) Use of disposal tax proceeds by counties.

Editor's Note. — Session Laws 1993-471, s. 4 enacted this section and s. 7 provided for its postponed repeal. Session Laws 1993-471, s. 11 made the section effective January 1, 1994, to repeal on July 1, 1999. Session Laws 1998-24, s. 7 amended Session Laws 1993-471, s. 11 to extend the postponed repeal date to July 1, 2002. Session Laws 2000-109, s. 9(a), effective July 13, 2000, amended s. 11 to delete the postponed date for repeal of this section. As to when an act takes effect absent specification of a date therein, see § 120-20.

§ 130A-309.83. (See Editor's Note) White Goods Management Account.

Editor's Note. — Session Laws 1993-471, s. 4 enacted this section and s. 7 provided for its postponed repeal. Session Laws 1993-471, s. 11 made the section effective January 1, 1994, to repeal on July 1, 1999. Session Laws 1998-24, s. 7 amended Session Laws 1993-471, s. 11 to extend the postponed repeal date to July 1, 2002. Session Laws 2000-109, s. 9(a), effective July 13, 2000, amended s. 11 to delete the postponed date for repeal of this section. As to when an act takes effect absent specification of a date therein, see § 120-20.

§ 130A-309.85. (See Editor's Note) Department to submit annual report on the management of white goods.

Editor's Note. — Session Laws 1998-24, s. 7, amended Session Laws 1993-471, s. 11, to change the effective date of the amendment by Session Laws 1993-471, s. 9 to July 1, 2002. Session Laws 2000-109, s. 9(a), effective July 13, 2000, amended s. 11 to delete the postponed date for this amendment. As to when an act takes effect absent specification of a date therein, see § 120-20.

For the version of this section as amended by Session Laws 1993, c. 471, s. 9, see the second version in the main volume.

Part 5. Brownfields Property Reuse Act.

§ 130A-310.31. Definitions.

Editor's Note. — Session Laws 1997-392, s. 5, as amended by Session Laws 2000-19, s. 17, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until 30 June 2001."

§ 130A-310.32. Brownfields agreement.

Cross References. — As to taxation of qualifying improvements on brownsfields, see § 105-277.13

§ 130A-310.34. Public notice and community involvement.

(a) A prospective developer who desires to enter into a brownfields agreement shall notify the public and the community in which the brownfields property is located of planned remediation and redevelopment activities. The prospective developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent to the Department. The Notice of Intent shall provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed brownfields agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Department, the prospective developer shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the brownfields property. The prospective developer shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the brownfields property is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The prospective developer shall also conspicuously post a copy of the summary of the Notice of Intent at the brownfields site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least 60 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within 30 days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Department shall also direct the prospective developer to publish, at least 30 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting.

(d) Prior to entering into a brownfields agreement, the Department shall take into account the comment received during the comment period and at the public meeting if the Department holds a public meeting. The Department shall incorporate into the brownfields agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Department shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis and to written comment from the units of local government that have taxing jurisdiction over the brownfields property. (1997-357, s. 2; 2000-158, s. 2.)

Effect of Amendments. — Session Laws 2000-158, s. 2, effective August 2, 2000, added "and to written comment from the units of local government that have taxing jurisdiction over the brownfields property" in subsection (d).

§ 130A-310.37. Construction of Part.

Editor's Note. — Session Laws 1997-392, s. 5, as amended by Session Laws 2000-19, s. 17, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until 30 June 2001."

Article 10.

North Carolina Drinking Water Act.

§ 130A-315. Drinking water rules.

(a) The Commission shall adopt and the Secretary shall enforce drinking water rules to regulate public water systems. The rules may distinguish between community water systems and noncommunity water systems.

(b) The rules shall:

(1) Specify contaminants which may have an adverse effect on the public health;

(2) Specify for each contaminant either:

a. A maximum contaminant level which is acceptable in water for human consumption, if it is feasible to establish the level of the contaminant in water in public water systems; or

b. One or more treatment techniques which lead to a reduction in the level of contaminants sufficient to protect the public health, if it is not feasible to establish the level of the contaminants in water in a public water system; and

(3) Establish criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels and treatment techniques as determined in paragraph (2) of this subsection. These rules may provide for:

a. The minimum quality of raw water which may be taken into a public water system;

b. A program of laboratory certification;

c. Monitoring and analysis;

d. Record-keeping and reporting;

e. Notice of noncompliance, failure to perform monitoring, variances and exemptions;

f. Inspection of public water systems; inspection of records required to be kept; and the taking of samples;

g. Criteria for design and construction of new or modified public water systems;

h. Review and approval of design and construction of new or modified public water systems;

i. Siting of new public water system facilities;

j. Variances and exemptions from the drinking water rules; and

k. Additional criteria and procedures as may be required to carry out the purpose of this Article.

(b1) The rules may also establish criteria and procedures to insure an adequate supply of drinking water. The rules may:

(1) Provide for record keeping and reporting.

(2) Provide for inspection of public water systems and required records.

(3) Establish criteria for the design and construction of new public water systems and for the modification of existing public water systems.

(4) Establish procedures for review and approval of the design and construction of new public water systems and for the modification of existing public water systems.

(4a) Limit the number of service connections to a public water system based on the quantity of water available to the public water system, provided that the number of service connections shall not be limited for a public water system operating in accordance with a local water supply plan that meets the requirements of G.S. 143-355(*l*).

(5) Establish criteria and procedures for siting new public water systems.

(6) Provide for variances and exemptions from the rules.

(7) Provide for notice of noncompliance in accordance with G.S. 130A-324.

(b2) Two or more water systems that are adjacent, that are owned or operated by the same supplier of water, that individually serve less than 15 service connections or less than 25 persons but that in combination serve 15 or more service connections or 25 or more persons, and that individually are not public water systems shall meet the standards applicable to public water systems for the following contaminants: coliform bacteria, nitrates, nitrites, lead, copper, and other inorganic chemicals for which testing and monitoring is required for public water systems on 1 July 1994. The standards applicable to these contaminants shall be enforced by the Commission as though the water systems to which this subsection applies were public water systems.

(b3) The Department shall not certify or renew a certification of a laboratory under rules adopted pursuant to subdivision (3)b. of subsection (b) of this section unless the laboratory offers to perform composite testing of samples taken from a single public water supply system for those contaminants that the laboratory is seeking certification or renewal of certification to the extent allowed by regulations adopted by the United States Environmental Protection Agency.

(c) The drinking water rules may be amended as necessary in accordance with required federal regulations.

(d) When a person that receives water from a public water system is authorized by the Utilities Commission, pursuant to G.S. 62-110(g), to install sub-meters and resell water to persons who occupy the same contiguous premises, that person shall be regulated as a consecutive water system. The monitoring, analysis, and record-keeping requirements applicable to consecutive water systems under this section shall be satisfied by the monitoring, analysis, and record keeping performed by the supplying water system and submitted to the Department in compliance with this section. The supplying water system shall perform the same level of monitoring, analysis, and record keeping that the supplying system would perform if the person that receives the water had not been authorized to resell water under G.S. 62-110(g), but the supplying water system shall not be required to perform additional monitoring, analysis, and record keeping. A supplying water system is not responsible for operation, maintenance, or repair of the consecutive water system. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 417, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 826, s. 1; 1993 (Reg. Sess., 1994), c. 776, s. 15; 1995, c. 25, s. 1; 2000-172, s. 1.1.)

Editor's Note. —

Session Laws 2000-172, s. 1.2 provides: "In enacting Section 1.1 of this act, it is the intent of the General Assembly to promote water conservation while protecting public health, safety, welfare, and the environment and avoiding unduly burdensome requirements on consecutive water systems. Section 1.1 of this act shall not be construed to impose any requirement on a supplying water system other than the requirements that apply to the supplying water system on the date this act becomes effective and that would apply to the supplying water system if a consecutive water system had not been authorized."

Session Laws 2000-172, s. 8.2, contains a severability clause.

Effect of Amendments. — Session Laws 2000-172, s. 1.1, effective August 2, 2000, added subsection (d).

Article 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

§ 130A-385. Duties of medical examiner upon receipt of notice; reports; copies.

(a) Upon receipt of a notification under G.S. 130A-383, the medical examiner shall take charge of the body, make inquiries regarding the cause and manner of death, reduce the findings to writing and promptly make a full report to the Chief Medical Examiner on forms prescribed for that purpose.

The Chief Medical Examiner or the county medical examiner is authorized to inspect and copy the medical records of the decedent whose death is under investigation. In addition, in an investigation conducted pursuant to this Article, the Chief Medical Examiner or the county medical examiner is authorized to inspect all physical evidence and documents which may be relevant to determining the cause and manner of death of the person whose death is under investigation, including decedent's personal possessions associated with the death, clothing, weapons, tissue and blood samples, cultures, medical equipment, X rays and other medical images. The Chief Medical Examiner or county medical examiner is further authorized to seek an administrative search warrant pursuant to G.S. 15-27.2 for the purpose of carrying out the duties imposed under this Article. In addition to the requirements of G.S. 15-27.2, no administrative search warrant shall be issued pursuant to this section unless the Chief Medical Examiner or county medical examiner submits an affidavit from the office of the district attorney in the district in which death occurred stating that the death in question is not under criminal investigation.

The Chief Medical Examiner shall provide directions as to the nature, character and extent of an investigation and appropriate forms for the required reports. The facilities of the central and district offices and their staff services shall be available to the medical examiners and designated pathologists in their investigations.

(b) The medical examiner shall complete a certificate of death, stating the name of the disease which in his opinion caused death. If the death was from external causes, the medical examiner shall state on the certificate of death the means of death, and whether, in the medical examiner's opinion, the manner of death was accident, suicide, homicide, execution by the State, or undetermined. The medical examiner shall also furnish any information as may be required by the State Registrar of Vital Statistics in order to properly classify the death.

(c) The Chief Medical Examiner shall have authority to amend a medical examiner death certificate.

(d) A copy of the report of the medical examiner investigation may be forwarded to the appropriate district attorney.

(e) In cases where death occurred due to an injury received in the course of the decedent's employment, the Chief Medical Examiner shall forward to the Commissioner of Labor a copy of the medical examiner's report of the investigation, including the location of the fatal injury and the name and address of the decedent's employer at the time of the fatal injury. The Chief Medical Examiner shall forward this report within 30 days of receipt of the information from the medical examiner.

(f) If a death occurred in a facility licensed subject to Article 2 or Article 3 of Chapter 122C of the General Statutes, or Articles 1 or 1A of Chapter 131D of the General Statutes, and the deceased was a client or resident of the facility or a recipient of facility services at the time of death, then the Chief Medical Examiner shall forward a copy of the medical examiner's report to the Secretary of Health and Human Services within 30 days of receipt of the report from the medical examiner. (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; 1983, c. 891, s. 2; 1989, c. 353, s. 2; c. 797; 1991 (Reg. Sess., 1992), c. 894, s. 6; 2000-129, s. 4.)

Editor's Note. — Session Laws 2000-129, s. 4, effective January 1, 2001, added subsection (f).

Part 4. Human Tissue Donation Program.

§ 130A-413. Coordinated human tissue donation program; legislative findings and purpose; program established.

Legal Periodicals. — For note, "Organ Allocation and the States: Can the States Restrict Broader Organ Sharing?" see 1999 Duke L.J. 261.

Chapter 130B.

Hazardous Waste Management Commission.

§ 130B-8. Commission may exempt itself from certain laws.

(a) Neither the Commission nor any contractor performing services on behalf of the Commission shall be subject to the following provisions of the General Statutes:

(1) Article 3 of Chapter 143 (Purchases and Contracts);
(2) Article 3C of Chapter 143 (Contracts to Obtain Consultant Services);
(3) Article 3D of Chapter 143 (Procurement of Architectural, Engineering, and Surveying Services);
(4) Article 8 of Chapter 143 (Public Contracts);
(5) Article 8B of Chapter 143 (State Building Commission);
(6) G.S. 143-341 (Powers and Duties of the Department of Administration);
(7) Chapter 146 (State Lands); and
(8) Article 2A of Chapter 150B shall not apply to contractor selection or technology selection pursuant to G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of Chapter 150B shall not apply to final decisions regarding site selection, contractor selection or technology selection pursuant to G.S. 130B-11, 130B-13, and 130B-14.

(b) Subdivisions (1) through (7) of subsection (a) of this section shall apply only when the Commission determines that exemption from a particular provision of the General Statutes is in the best interest of the State. Each such determination by the Commission shall be set out in the official minutes of the Commission and shall state with particularity (i) the provision or provisions of the General Statutes from which the Commission exempts itself pursuant to this section, (ii) the action or activities covered by such exemption, and (iii) the justification for such exemption, taking into account the purposes of such provisions of the General Statutes and of this Chapter. (1989, c. 168, s. 1; 1991 (Reg. Sess., 1992), c. 890, s. 12; 2000-189, s. 13.)

Effect of Amendments. — Session Laws 2000-189, s. 13, effective August 2, 2000, substituted “Article 2A” for “Article 2” in subdivision (a)(8).

Chapter 131A.

Health Care Facilities Finance Act.

§ 131A-21. Tax exemption.

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and welfare. If bonds or notes are issued by the Commission to provide or improve a health care facility, then until the bonds or notes are retired, the facility for which bonds or notes are issued is exempt from property taxes to the extent provided in this section. If refunding bonds or notes are issued to refund bonds or notes issued to provide or improve a health care facility, the facility will continue to be exempt from property taxes as provided in this section until such time as the refunding bonds or notes are retired, provided that the final maturity of the refunding bonds or notes does not extend beyond the final maturity of the original bonds or notes.

The property tax exemption under this section shall not exceed the lesser of the original principal amount of the bonds or notes or the assessed value for ad valorem tax purposes of the facility. If bonds or notes are issued to finance more than one health care facility, only that portion of the principal amount of the bonds or notes used to provide or improve the particular facility, including any allocable reserves and financing costs, may be considered for the purpose of determining the amount of the exemption allowable under this section. The exemption authorized by this section shall begin with the first full tax year of the taxpayer following the issuance of the bonds and notes. This section does not affect a health care facility's eligibility for a property tax exemption under Subchapter II of Chapter 105 of the General Statutes.

Any bonds or notes issued by the Commission under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance, estate, or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1975, c. 766, s. 1; 1995, c. 46, s. 12; 2000-20, s. 1.)

Effect of Amendments. — Session Laws 2000-20, s. 1, effective October 1, 2000, and applicable to bonds or notes issued on or after that date, rewrote the first paragraph, inserted the second paragraph and in the third paragraph, inserted "estate."

Chapter 131D.

Inspection and Licensing of Facilities.

Article 1.

Licensing of Facilities.

Article 1A.

Control Over Child Placing and Child Care.

Article 3.

Adult Care Home Residents' Bill of Rights.

Article 5.

Miscellaneous Provisions.

Article 1.

Licensing of Facilities.

§ 131D-2. Licensing of adult care homes for the aged and disabled.

(a) The following definitions will apply in the interpretation of this section:

(1) "Abuse" means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of an adult care home of services which are necessary to maintain mental and physical health.

(1a) "Administrator" means a person approved by the Department of Health and Human Services who has the responsibility for the total operation of a licensed domiciliary home.

(1b) "Adult care home" is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes.

(1c) "Amenities" means services such as meals, housekeeping, transportation, and grocery shopping that do not involve hands-on personal care.

(1d) "Assisted living residence" means any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102. Effective October 1, 1995, there are two types of assisted living residences: adult care homes and group homes for developmentally disabled adults. Effective July 1, 1996, there is a third type, multiunit assisted housing with services.

(1e) "Compensatory agent" means a spouse, relative, or other caretaker who lives with a resident and provides care to a resident.

(1f) "Department" means the Department of Health and Human Services unless some other meaning is clearly indicated from the context.

(2) "Developmentally disabled adult" means a person who has attained the age of 18 years and who has a developmental disability defined as a severe, chronic disability of a person which:

a. Is attributed to a mental or physical impairment or combination of mental and physical impairments;
b. Is manifested before the person attains age 22;
c. Is likely to continue indefinitely;
d. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(3) Repealed by Session Laws 1995, c. 535, s. 8.

(4) "Exploitation" means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.

(5) "Family care home" means an adult care home having two to six 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 an adult care home which has two to nine developmentally disabled adult residents.

(7) Repealed by Session Laws 1995, c. 535, s. 8.

(7a) Effective July 1, 1996, "multiunit assisted housing with services" means an assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency, through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register with the Division of Facility Services and to provide a disclosure statement. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

a. Emergency response system;
b. Charges for services offered;
c. Limitations of tenancy;
d. Limitations of services;
e. Resident responsibilities;
f. Financial/legal relationship between housing management and home care or hospice agencies;
g. A listing of all home care or hospice agencies and other community services in the area;
h. An appeals process; and
i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, are exempt from the regulatory requirements for multiunit assisted housing with services programs.

(8) "Neglect" means the failure to provide the services necessary to maintain a resident's physical or mental health.

(9) "Personal care services" means any hands-on services allowed to be performed by In-Home Aides II or III as outlined in Department rules.

(10) "Registration" means the submission by a multiunit assisted housing with services provider of a disclosure statement containing all the information as outlined in subdivision (7a) of this subsection.

(11) "Resident" means a person living in an assisted living residence for the purpose of obtaining access to housing and services provided or made available by housing management.

(12) "Secretary" means the Secretary of Health and Human Services unless some other meaning is clearly indicated from the context.

(a1) Persons not to be cared for in adult care homes. — Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, adult care homes shall not care for individuals with any of the following conditions or care needs:

(1) Ventilator dependency;
(2) Individuals requiring continuous licensed nursing care;
(3) Individuals whose physician certifies that placement is no longer appropriate;
(4) Individuals whose health needs cannot be met in the specific adult care home as determined by the residence; and
(5) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in an adult care home.

(a2) Persons not to be cared for in multiunit assisted housing with services. — Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, multiunit assisted housing with services shall not care for individuals with any of the following conditions or care needs:

(1) Ventilator dependency;
(2) Dermal ulcers III and IV, except those stage III ulcers which are determined by an independent physician to be healing;
(3) Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a home care or hospice agency licensed in this State;
(4) Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
(5) Psychotropic medications without appropriate diagnosis and treatment plans;
(6) Nasogastric tubes;
(7) Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube, or as managed by a home care or hospice agency licensed in this State;
(8) Individuals requiring continuous licensed nursing care;
(9) Individuals whose physician certifies that placement is no longer appropriate;
(10) Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by a uniform assessment instrument and who meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on a uniform assessment instrument;
(11) Individuals whose health needs cannot be met in the specific multiunit assisted housing with services as determined by the residence; and
(12) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in multiunit assisted housing with services.

(a3) Hospice care. — At the request of the resident, hospice care may be provided in an assisted living residence under the same requirements for hospice programs as described in Article 10 of Chapter 131E of the General Statutes.

(b) Licensure; inspections. —

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) 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 for failure to comply with any part of this section or any rules adopted hereunder adult care. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. A license shall not be renewed if outstanding fines and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable infor-

mation that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;
b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:
   1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
   2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
b. The Department finds that:
   1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
   2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license.

(1a) In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection, the Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. In carrying out this requirement, the Department shall work with county departments of social services to do the routine monitoring and to have the Division of Facility Services oversee this monitoring and perform any follow-up inspection called for. The Department shall monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit. The Department shall also keep an up-to-date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section.

(1b) No new license shall be issued for any adult care home to an applicant for licensure who:

a. Was the owner, principal, or affiliate of an adult care home that had its license revoked until one full year after the date of revocation;

b. Is the owner, principal, or affiliate of an adult care home that was assessed a penalty for a Type A or Type B violation until the earlier of one year from the date the penalty was assessed or until the home has substantially complied with the correction plan established pursuant to G.S. 131D-34 and substantial compliance has been certified by the Department; or

c. Is the owner, principal, or affiliate of an adult care home that had its license summarily suspended or downgraded to provisional status as a result of Type A or B violations until six months from the date of reinstatement of the license, restoration from provisional to full licensure, or termination of the provisional license, as applicable.

An applicant for new licensure may appeal a denial of certification of substantial compliance under subparagraph b. of this subdivision by filing with the Department a request for review by the Secretary within 10 days of the date of denial of the certification. Within 10 days of receipt of the request for review the Secretary shall issue to the applicant a written determination that either denies certification of substantial compliance or certifies substantial compliance. The decision of the Secretary is final.

(2) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a Class 3 misdemeanor, and upon conviction shall be punishable only by a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(3) In addition, the Department may summarily suspend a license pursuant to G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation or any condition which presents an imminent danger to the health and safety of any resident of the home. Any facility wishing to contest summary suspension of a license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of summary suspension to the licensee.

(4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under subsection (b):

a. Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected, and

b. Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives;

unless the resident objects in writing to review of his records or disclosure of such information.

The facility, its employees and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

The Department shall not disclose:

a. Any confidential or privileged information obtained under this subsection unless the resident or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or

b. The name of anyone who has furnished information concerning a facility without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes.

(5) Notwithstanding any law to the contrary, Chapter 132 of the General Statutes, the Public Records Law, applies to all records of the State Division of Social Services of the Department of Health and Human Services and of any county department of social services regarding inspections of domiciliary care facilities except for information in the records that is confidential or privileged, including medical records, or that contains the names of residents or complainants.

(6) Prior to issuing a new license or renewing an existing license, the Department shall conduct a compliance history review of the facility and its principals and affiliates. The Department may refuse to license a facility when the compliance history review shows a pattern of noncompliance with State law by the facility or its principals or affiliates, or otherwise demonstrates disregard for the health, safety, and welfare of residents in current or past facilities. The Department shall require compliance history information and make its determination according to rules adopted by the Medical Care Commission.

(c) The following are excluded from the provisions of this section and are not required to be registered or obtain licensure under this section:

(1) Facilities licensed under Chapter 122C or Chapter 131E of the General Statutes;

(2) Persons subject to rules of the Division of Vocational Rehabilitation Services;

(3) Facilities that care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration;

(4) Facilities that make no charges for housing, amenities, or personal care service, either directly or indirectly; and

(5) Institutions that are maintained or operated by a unit of government and that were established, maintained, or operated by a unit of government and exempt from licensure by the Department on September 30, 1995.

(c1) Although the contract obligation still remains to pay the housing management for any services covered by the contract between the resident and housing management, the resident of an assisted living facility has the right to obtain services not at the expense of the housing management, from providers other than the housing management.

(c2) The Medical Care Commission shall adopt rules necessary to carry out this section. The Commission has the authority, in adopting rules, to specify the limitation of nursing services provided by assisted living residences. In developing rules, the Commission shall consider the need to ensure comparable quality of services provided to residents, whether these services are provided directly by a licensed assisted living provider, licensed home care agency, or hospice. In adult care homes, living arrangements where residents require supervision due to cognitive impairments, rules shall be promulgated to ensure that supervision is appropriate and adequate to meet the special needs of these residents.

(c3) Nothing in this section shall be construed to supersede any federal or State antitrust, antikickback, or safe harbor laws or regulations.

(c4) Housing programs for two or more unrelated adults that target their services to elderly or disabled persons in which the only services provided by the housing management, either directly or through an agreement or other arrangements, are amenities that include, at a minimum, one meal a day and housekeeping services, are exempt from licensure, but are required to be listed with the Division of Aging, providing information on their location and number of units operated. This type of housing is not considered assisted living.

(d) Repealed by Session Laws 1995, c. 535, s. 8.

(e) The Department shall ensure that facilities conduct and complete an assessment of each resident within seventy-two hours of admitting the resident and annually thereafter. In conducting the assessment, the facility shall use an assessment instrument approved by the Secretary upon the advice of the Director of the Division of Aging. The Department shall provide ongoing training for facility personnel in the use of the approved assessment instrument.

The facility shall use the assessment to develop appropriate and comprehensive service plans and care plans and to determine the level and type of facility staff that is needed to meet the needs of residents. The assessment shall determine a resident's level of functioning and shall include, but not be limited to, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident. The assessment shall not serve as the basis for medical care. The assessment shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

The Department as part of its inspection and licensing of adult care homes shall review assessments and related service plans and care plans for a selected number of residents. In conducting this review, the Department shall determine:

(1) Whether the appropriate assessment instrument was administered and interpreted correctly;
(2) Whether the facility is capable of providing the necessary services;
(3) Whether the service plan or care plan conforms to the results of an appropriately administered and interpreted assessment; and
(4) Whether the service plans or care plans are being implemented fully and in accordance with an appropriately administered and interpreted assessment.

If the Department finds that the facility is not carrying out its assessment responsibilities in accordance with this section, the Department shall notify the facility and require the facility to implement a corrective action plan. The Department shall also notify the resident of the results of its review of the assessment, service plans, and care plans developed for the resident. In addition to administrative penalties, the Secretary may suspend the admission of any new residents to the facility. The suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

(f) If any provisions of this section or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(g) In order for an adult care home to maintain its license, it shall not hinder or interfere with the proper performance of duty of a lawfully appointed community advisory committee, as defined by G.S. 131D-31 and G.S. 131D-32.

(h) Suspension of admissions to adult care home:

(1) In addition to the administrative penalties described in subsection (b), the Secretary may suspend the admission of any new residents to an adult care home, where the conditions of the adult care home are detrimental to the health or safety of the residents. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

(2) In imposing a suspension under this subsection, the Secretary shall consider the following factors:

a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and

b. The character and degree of impact of the conditions at the home on the health or safety of its residents.

(3) The Secretary of Health and Human Services shall adopt rules to implement this subsection.

(4) Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of suspension of admissions to the licensee.

(i) Notwithstanding the existence or pursuit of any other remedy, the Department of Health and Human Services may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of an adult care home without a license. Such action shall be instituted in the superior court of the county in which any unlicensed activity has occurred or is occurring.

If any person shall hinder the proper performance of duty of the Secretary or his representative in carrying out this section, the Secretary may institute an action in the superior court of the county in which the hindrance has occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

Actions under this subsection shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (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; 1983, c. 824, ss. 1-12; 1987, c. 827, ss. 1, 241; 1991, c. 572, ss. 1, 2; 1993, c. 321, s. 242; c. 530, s. 2; c. 539, s. 953; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 280, s. 1; c. 535, s. 8; 1997-443, s. 11A.118(a); 1997-456, s. 20; 1997-522, s. 1; 1999-113, ss. 1, 2; 1999-193, s. 1; 1999-334, ss. 1.2-1.5, 1.7, 1.14, 1.15, 3.3, 3.4; 1999-443, s. 2; 2000-140, s. 30.)

Editor's Note. — The section was amended by Session Laws 1999-113, s. 1, and by Session Laws 1999-334, s. 1.7, in the coded bill drafting format provided by § 120-20.1. Session Laws 1999-334, s. 1.7 substituted "adult care" for "domiciliary" twice in the former third sentence of the introductory language of subdivision (b)(1). The amendment by Session Laws 1999-113, s. 1, deleted the former third sentence of the introductory language of subdivision (b)(1).

Session Laws 2000-140, s. 30, attempted to correct the coded bill drafting problem, but left extraneous language at the end of the second sentence in the subdivision. Subdivision (b)(1) has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 2000-140, s. 30, effective July 21, 2000, deleted "adult care adult care" following "adopted hereunder adult care" in the second sentence in subdivision (b)(1), which words had been inadvertently introduced when the section was amended by Session Laws 1999-113, s. 1 and by Session Laws 1999-334, s. 1.7.

§ 131D-4.2. Adult care homes; family care homes; annual cost reports; exemptions; enforcement.

(a) Except for family care homes, adult care homes with a licensed capacity of seven to twenty beds, which are licensed pursuant to this Chapter, to Chapter 122C of the General Statutes, and to Chapter 131E of the General Statutes, shall submit audited reports of actual costs to the Department at least every two years in accordance with rules adopted by the Department under G.S. 143B-10. For years in which an audited report of actual costs is not required, an annual cost report shall be submitted to the Department in accordance with rules adopted by the Department under G.S. 143B-10.

(b) Except for family care homes, adult care homes with a licensed capacity of twenty-one beds or more, which are licensed pursuant to this Chapter, to Chapter 122C of the General Statutes, and to Chapter 131E of the General Statutes, shall submit annual audited reports of actual costs to the Department of Health and Human Services, in accordance with rules adopted by the Department under G.S. 143B-10.

(c) Repealed by Session Laws 1999-334, s. 3.1, effective July 1, 1999.

(d) Facilities that do not receive State/County Special Assistance or Medicaid personal care are exempt from the reporting requirements of this section.

(e) Except as otherwise provided in this subsection, the annual reporting period for facilities licensed pursuant to this Chapter or Chapter 131E of the General Statutes shall be October 1 through September 30, with the annual report due by the following December 31, unless the Department determines there is good cause for delay. The annual report for combination facilities and free-standing adult care home facilities owned and operated by a hospital shall be due 15 days after the hospital's Medicare cost report is due. The annual report for combination facilities not owned and operated by a hospital shall be due 15 days after the nursing facility's Medicaid cost report is due. The annual reporting period for facilities licensed pursuant to Chapter 122C of the General Statutes shall be July 1 through June 30, with the annual report due by the following December 31, unless the Department determines there is good cause for delay. Under this subsection, good cause is an action that is uncontrollable by the provider. If the Department finds good cause for delay, it may extend the deadline for filing a report for up to an additional 30 days.

(f) The Department shall have the authority to conduct audits and review audits submitted pursuant to subsections (a), (b), and (c) above.

(g) The Department shall suspend admissions to facilities that fail to submit annual reports by December 31, or by the date established by the Department when good cause for delay is found pursuant to G.S. 131D-4.2(e). Suspension of admissions shall remain in effect until reports are submitted or licenses are suspended or revoked under subdivision (2) of this subsection. 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 150B of the General Statutes.

(h) The report documentation shall be used to adjust the adult care home rate annually, an adjustment that is in addition to the annual standard adjustment for inflation as determined by the Office of State Budget, Planning and Management. Rates for family care homes shall be based on market rate data. The Secretary of Health and Human Services shall adopt rules for the rate-setting methodology and audited cost reports in accordance with G.S. 143B-10. (1995, c. 449, s. 3; c. 535, s. 10; 1997-73, ss. 1, 2; 1997-443, s. 11A.118(a); 1998-212, s. 12.1A; 1999-334, ss. 3.1, 3.2; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (h).

§ 131D-4.3. Adult care home rules.

(a) Pursuant to G.S. 143B-165, the North Carolina Medical Care Commission shall adopt rules to ensure at a minimum, but shall not be limited to, the provision of the following by adult care homes:

(1) Repealed by Session Laws 2000-111, s. 1, effective July 14, 2000.

(2) A minimum of 75 hours of training for personal care aides performing heavy care tasks and a minimum of 40 hours of training for all personal care aides. The training for aides providing heavy care tasks shall be comparable to State-approved Certified Nurse Aide I training. For those aides meeting the 40-hour requirement, at least 20 hours shall be classroom training to include at a minimum:

a. Basic nursing skills;
b. Personal care skills;
c. Cognitive, behavioral, and social care;
d. Basic restorative services;
e. Residents' rights.

A minimum of 20 hours of training shall be provided for aides in family care homes that do not have heavy care residents. Persons who either pass a competency examination developed by the Department of Health and Human Services, have been employed as personal care aides for a period of time as established by the Department, or meet minimum requirements of a combination of training, testing, and experience as established by the Department shall be exempt from the training requirements of this subdivision;

(3) Monitoring and supervision of residents;

(4) Oversight and quality of care as stated in G.S. 131D-4.1; and

(5) Adult care homes shall comply with all of the following staffing requirements:

a. First shift (morning): 0.4 hours of aide duty for each resident (licensed capacity or resident census), or 8.0 hours of aide duty per each 20 residents (licensed capacity or resident census) plus 3.0 hours for all other residents, whichever is greater;
b. Second shift (afternoon): 0.4 hours of aide duty for each resident (licensed capacity or resident census), or 8.0 hours of aide duty per each 20 residents plus 3.0 hours for all other residents (licensed capacity or resident census), whichever is greater;
c. Third shift (evening): 8.0 hours of aide duty per 30 or fewer residents (licensed capacity or resident census).

In addition to these requirements, the facility shall provide staff to meet the needs of the facility's heavy care residents equal to the amount of time reimbursed by Medicaid. As used in this subdivision, the term "heavy care resident" means an individual residing in an adult care home who is defined "heavy care" by Medicaid and for which the facility is receiving enhanced Medicaid payments for such needs.

(b) Rules to implement this section shall be adopted as emergency rules in accordance with Chapter 150B of the General Statutes.

(c) The Department may suspend or revoke a facility's license, subject to the provisions of Chapter 150B, to enforce compliance by a facility with this section or to punish noncompliance. (1995, c. 449, s. 3; c. 535, s. 10; 1997-443, s. 11A.118(a); 1998-212, s. 12.16B(a); 2000-111, s. 1.)

Effect of Amendments. —
Session Laws 2000-111, s. 1, effective July 14, 2000, substituted "143B-165, the North Carolina Medical Care" for "143B-153, the Social Services" in subsection (a) and repealed former subdivision (a)(1) pertaining to client assessment and independent case management.

§ 131D-4.5. Rules adopted by Medical Care Commission.

The Medical Care Commission shall adopt rules as follows:

(1) Establishing minimum medication administration standards for adult care homes. The rules shall include the minimum staffing and training requirements for medication aides and standards for professional supervision of adult care homes' medication controls. The requirements shall be designed to reduce the medication error rate in adult care homes to an acceptable level. The requirements shall include, but need not be limited to, all of the following:
  a. Training for medication aides, including periodic refresher training.
  b. Standards for management of complex medication regimens.
  c. Oversight by licensed professionals.
  d. Measures to ensure proper storage of medication.

(2) Establishing training requirements for adult care home staff in behavioral interventions. The training shall include appropriate responses to behavioral problems posed by adult care residents. The training shall emphasize safety and humane care and shall specifically include alternatives to the use of restraints.

(3) Establishing minimum training and education qualifications for supervisors in adult care homes and specifying the safety responsibilities of supervisors.

(4) Specifying the qualifications of staff who shall be on duty in adult care homes during various portions of the day in order to assure safe and quality care for the residents. The rules shall take into account varied resident needs and population mixes.

(5) Implementing the due process and appeal rights for discharge and transfer of residents in adult care homes afforded by G.S. 131D-21. The rules shall offer at least the same protections to residents as State and federal rules and regulations governing the transfer or discharge of residents from nursing homes.

(6) Establishing procedures for determining the compliance history of adult care homes' principals and affiliates. The rules shall include criteria for refusing to license facilities which have a history of, or have principals or affiliates with a history of, noncompliance with State law, or disregard for the health, safety, and welfare of residents.

(7) For the licensure of special care units in accordance with G.S. 131D-4.6, and for disclosures required to be made under G.S. 131D-8.

(8) For time limited provisional licenses and for granting extensions for provisional licenses. (1999-334, s. 1.1; 2000-111, s. 2.)

Effect of Amendments. — Session Laws 2000-111, s. 2, effective July 14, 2000, rewrote subdivision (5).

§ 131D-9. (Effective until September 1, 2001) Immunization of residents of adult care homes.

(a) Except as provided in subsection (e) of this section, an adult care home licensed under this Article shall require residents to be immunized against pneumococcal disease.

(b) Upon admission, an adult care home shall notify the resident of the immunization requirements of this section and shall request that the resident agree to be immunized against pneumococcal disease.

(c) An adult care home shall document the immunization against pneumococcal disease for each resident. Upon finding that a resident is lacking the immunization, or if the adult care home is unable to verify that the individual has received the required immunization, the adult care home shall provide or arrange for immunization. The immunization and documentation required shall occur not later than November 30 of each year.

(d) For an individual who becomes a resident of the adult care home after November 30 but before March 30 of the following year, the adult care home shall determine the individual's status for the immunization required under this section, and if found to be deficient, the adult care home shall provide the immunization.

(e) No individual shall be required to receive vaccine under this section if the vaccine is medically contraindicated, or if the vaccine is against the individual's religious beliefs, or if the individual refuses the vaccine after being fully informed of the health risks of not being immunized.

(f) Notwithstanding any other provision of law to the contrary, the Health Services Commission shall have the authority to adopt rules to implement the immunization requirements of this section. (2000-112, s. 1.)

Section Set Out Twice. — The section above is effective until September 1, 2001. For the section as amended September 1, 2001, see the following section, also numbered § 131D-9.

Editor's Note. — Session Laws 2000-112, s. 7, made this section effective July 14, 2000.

Session Laws 2000-112, s. 5, directs the Department of Health and Human Services to make available to nursing homes and adult care homes educational and informational materials pertaining to vaccinations required under the act.

§ 131D-9. (Effective September 1, 2001) Immunization of employees and residents of adult care homes.

(a) Except as provided in subsection (e) of this section, an adult care home licensed under this Article shall require residents and employees to be immunized annually against influenza virus and shall require residents to also be immunized against pneumococcal disease.

(b) Upon admission, an adult care home shall notify the resident of the immunization requirements of this section and shall request that the resident agree to be immunized against influenza virus and pneumococcal disease.

(b1) An adult care home shall notify every employee of the immunization requirements of this section and shall request that the employee agree to be immunized against the influenza virus.

(c) An adult care home shall document the annual immunization against influenza virus and the immunization against pneumococcal disease for each resident and each employee, as required under this section. Upon finding that a resident is lacking one or both of these immunizations or that an employee has not been immunized against influenza virus, or if the adult care home is

§ 131D-9 is set out twice. See notes.

unable to verify that the individual has received the required immunization, the adult care home shall provide or arrange for immunization. The immunization and documentation required shall occur not later than November 30 of each year.

(d) For an individual who becomes a resident of or who is newly employed by the adult care home after November 30 but before March 30 of the following year, the adult care home shall determine the individual's status for the immunizations required under this section, and if found to be deficient, the adult care home shall provide the immunization.

(e) No individual shall be required to receive vaccine under this section if the vaccine is medically contraindicated, or if the vaccine is against the individual's religious beliefs, or if the individual refuses the vaccine after being fully informed of the health risks of not being immunized.

(f) Notwithstanding any other provision of law to the contrary, the Health Services Commission shall have the authority to adopt rules to implement the immunization requirements of this section.

(g) As used in this section, "employee" means an individual who is a part-time or full-time employee of the adult care home. (2000-112, ss. 1, 2.)

Section Set Out Twice. — The section above is effective September 1, 2001. For the section as in effect until September 1, 2001, see the previous section, also numbered § 131D-9.

Effect of Amendments. — Session Laws 2000-112, s. 2, effective September 1, 2001, inserted "employees and" in the section heading; substituted "and employees to be immunized annually against influenza virus and shall require residents to also be immunized against" for "to be immunized against" in subsection (a); in subsection (b), inserted "influenza virus and"; added subsection (b1); in subsection (c), inserted "annual immunization against influenza virus and the" and "and each employee, as required under this section" in the first sentence, and substituted "one or both of these immunizations or that an employee has not been immunized against influenza virus" for "the immunization"; inserted "or who is newly employed by" in subsection (d); added subsection (g); and made a minor wording change.

§ 131D-10: Reserved for future codification purposes.

ARTICLE 1A.

Control Over Child Placing and Child Care.

§ 131D-10.4. Exemptions.

This Article shall not apply to:

(1) Any residential child-care facility 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 before July 1, 1977;

(2) State institutions for emotionally disturbed or delinquent children, the mentally ill, mentally retarded, and substance abusers;

(3) Secure detention facilities as specified in Article 12 of Chapter 143B of the General Statutes;

(4) Licensable facilities subject to the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services as specified in Article 2 of Chapter 122C of the General Statutes;

(5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14;
(6) Primarily educational institutions as defined in G.S. 131D-10.2(11); or
(7) Individuals who are related by blood, marriage, or adoption to the child. (1983, c. 637, s. 2; 1985, c. 589, s. 39; 1991, c. 636, s. 19(b); 1998-202, s. 13(ii); 1999-423, s. 6; 2000-137, s. 4(gg).)

Effect of Amendments. — Session Laws 2000-137, s. 4(gg), effective July 20, 2000, substituted "Article 12 of Chapter 143B" for "Article 3C of Chapter 147" in subdivision (3).

§ 131D-10.5. Powers and duties of the Commission.

In addition to other powers and duties prescribed by law, the Commission shall exercise the following powers and duties:
(1) Adopt, amend and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
(2) Issue declaratory rulings as may be needed to implement the provisions and purposes of this Article;
(3) Adopt rules governing procedures to appeal Department decisions pursuant to this Article granting, denying, suspending or revoking licenses;
(4) Adopt criteria for waiver of licensing rules adopted pursuant to this Article;
(5) Adopt rules on documenting the use of physical restraint in residential child-care facilities; and
(6) Adopt rules establishing personnel and training requirements related to the use of physical restraints and time-out for staff employed in residential child-care facilities. (1983, c. 637, s. 2; 2000-129, s. 2(a).)

Effect of Amendments. — Session Laws 2000-129, s. 2(a), effective January 1, 2001, added subdivisions (5) and (6); and made two minor stylistic changes.

§ 131D-10.5A. Collection of data on use of restraints in residential child-care facilities.

A residential child-care facility that employs physical restraint of a child shall collect data on the use of the restraint. The data shall reflect for each incidence, the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary. The facility shall make the data available to the Department upon request. Nothing in this subsection abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department under this subsection. In reviewing data requested under this subsection, the Department shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this subsection. (2000-129, s. 2(b).)

Editor's Note. — Session Laws 2000-129, s. 7, made this section effective January 1, 2001.

§ 131D-10.6. Powers and duties of the Department.

In addition to other powers and duties prescribed by law, the Department shall exercise the following powers and duties:

(1) Investigate applicants for licensure to determine whether they are in compliance with licensing rules adopted by the Commission and the provisions of this Article.

(2) Grant a license when an investigation shows compliance with this Article and Commission rules. The license shall be valid for a period not to exceed 24 months as specified by Commission rules and may be revoked or placed in suspended or provisional status sooner if the Department finds that licensure rules are not being met or upon a finding that the health, safety or welfare of children is threatened.

(3) Administer and enforce the provisions of this Article and the rules of the Commission.

(4) Appoint hearing officers to conduct appeals pursuant to this Article.

(5) Prescribe the form in which application for licensure or a request for waiver of Commission rules shall be submitted.

(6) Inspect facilities and obtain records, documents and other information necessary to determine compliance with the provisions of this Article and Commission rules.

(7) Grant, deny, suspend or revoke a license or a provisional license, in accordance with Commission rules.

(8) Act to grant or deny a request for waiver of Commission rules within 10 business days after its receipt. Grant a waiver for good cause to Commission rules that do not affect the health, safety, or welfare of children in facilities subject to licensure under this Article, in accordance with Commission rules.

(9) Undertake a comprehensive study of the existing procedures for granting or denying an application for licensure or a request for waiver of Commission rules and report to the General Assembly on or before May 1, 1998, regarding its efforts to make the process more efficient and less time-consuming and its recommendations for any changes in the licensing laws or rules. The study shall include the development of a procedure that will ensure that the local Guardian Ad Litem Program is notified by the county department of social services of the request for a waiver if a guardian has been appointed for any child who may be affected by the waiver.

(10) Report annually on October 1 to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services the level of facility compliance with applicable State law governing the use of restraint and time-out in residential child-care facilities. The report shall also include the total number of facilities that reported deaths under this section, the number of deaths reported by each facility, the number of deaths investigated pursuant to this section, and the number found by the investigation to be related to the use of physical restraint or time-out. (1983, c. 637, s. 2; 1997-110, s. 1; 2000-129, s. 5(b).)

Effect of Amendments. — Session Laws 2000-129, s. 5(b), effective January 1, 2001, added subdivision (10).

§ 131D-10.6A. Training by the Division of Social Services required.

(a) The Division of Social Services, Department of Health and Human Services, shall continue the in-house training component that provides a mandated require a minimum of 30 hours of preservice training for foster care parents either prior to licensure or within six months from the date a provisional license is issued pursuant to G.S.131D-10.3, and 84 hours for foster care workers and adoption social workers 131D-10.3 and a mandated minimum of 10 hours of continuing education for all foster care parents and 18 hours for foster care workers and adoption social workers. annually after the year in which a license is obtained.

(b) **(See Editor's Note)** The Division of Social Services shall establish minimum training requirements for child welfare services staff. The minimum training requirements established by the Division are as follows:

(1) Child welfare services workers shall complete a minimum of 72 hours of preservice training before assuming direct client contact responsibilities.

(2) Child protective services workers shall complete a minimum of 18 hours of additional training that the Division of Social Services determines is necessary to adequately meet training needs.

(3) Foster care and adoption workers shall complete a minimum of 39 hours of additional training that the Division of Social Services determines is necessary to adequately meet training needs.

(4) Child welfare services supervisors shall complete a minimum of 72 hours of preservice training before assuming supervisory responsibilities and a minimum of 54 hours of additional training that the Division of Social Services determines is necessary to adequately meet training needs.

(5) Child welfare services staff shall complete 24 hours of continuing education annually.

The Division of Social Services may grant an exception in whole or in part to the requirement under subdivision (1) of this subsection to child welfare workers who satisfactorily complete or are enrolled in a masters or bachelors program after July 1, 1999, from a North Carolina social work program accredited pursuant to the Council on Social Work Education. The program's curricula must cover the specific preservice training requirements as established by the Division of Social Services.

The Division of Social Services shall ensure that training opportunities are available for county departments of social services and consolidated human service agencies to meet the training requirements of this subsection. (1995, c. 324, s. 23.25; 1997-390, s. 11.1; 1997-443, s. 11A.118(a); 2000-67, s. 11.14(c).)

Editor's Note. —

Session Laws 1997-443, s. 11.57(d), as amended by Session Laws 1998-212, s. 12.22, and by Session Laws 1999-237, s. 11.28(b), provided that, notwithstanding this section, the Division of Social Services should establish training requirements for child welfare services staff initially hired on and after January 1, 1998, set the minimum training requirements and circumstances in which the Division could waive training requirements for child welfare workers enrolled in a masters or bachelors degree program, provided that the Division should ensure that training opportunities were available for county departments of social services and consolidated human services agencies to meet the training requirements, and provided that Session Laws 1997-443, s. 11.57(d), as amended, should continue in effect until explicitly repealed. Session Laws 2000-67, s. 11.14(b), repealed Session Laws 1997-443, s. 11.57(d), as amended, effective July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 11.14(d), provides that subsection (b) of this section, as enacted by the act, applies to child welfare services staff initially hired on or after January 1, 1998.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 11.14(c), effective July 1, 2000, rewrote the section. See editor's note.

§ 131D-10.6B. Report of death.

(a) A facility licensed under this Article shall notify the Department immediately upon the death of any resident of the facility that occurs within seven days of physical restraint of the resident, and shall notify the Department within three days of the death of any resident of the facility resulting from violence, accident, suicide, or homicide. The Department may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Department of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Department or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Department shall notify the Governor's Advocacy Council for Persons With Disabilities that a person with a disability has died. The Department shall provide the Council access to the information about each death reported to the Council pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department, and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The Council shall use the information in accordance with its powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

(c) If the death of a resident of the facility occurs within seven days of the use of physical restraint, the Department shall initiate immediately an investigation of the death.

(d) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department or the Council. In carrying out the requirements of this section, the Department and the Council shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(e) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section. (2000-129, s. 5(a).)

Editor's Note. — Session Laws 2000-129, s. 7, made this section effective January 1, 2001.

ARTICLE 3.

Adult Care Home Residents' Bill of Rights.

§ 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 without the written consent of the individual or guardian, which consent shall specify to whom the disclosure may be made, except as required by applicable State or federal statute or regulation or by third party contract. It is not the intent of this section to prohibit access to medical records by the treating physician except when the individual objects in writing. Records may also be disclosed without the written consent of the individual to agencies, institutions or individuals which are providing emergency medical services to the individual. Disclosure of information shall be limited to that which is necessary to meet the emergency.

(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 or notice of revocation of license by the North Carolina Department of Health and Human Services and the basis on which the provisional

license or notice of revocation of 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.

(17) To not be transferred or discharged from a facility except for medical reasons, the residents" own or other residents" welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days" advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the Medical Care Commission, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. The Medical Care Commission shall adopt rules pertaining to the transfer and discharge of residents that offer at least the same protections to residents as State and federal rules and regulations governing the transfer or discharge of residents from nursing homes. (1981, c. 923, s. 1; 1983, c. 824, s. 13; 1983 (Reg. Sess., 1984), c. 1076; 1997-443, s. 11A.118(a); 1999-334, s. 1.6; 2000-111, s. 3.)

Effect of Amendments. — Session Laws 2000-111, s. 3, effective July 14, 2000, substituted "Medical Care Commission" for "Secretary" twice in subdivision (17).

§ 131D-34.1. Report of death of resident.

(a) An adult care home shall notify the Department of Health and Human Services immediately upon the death of any resident that occurs in the adult care home or that occurs within 24 hours of the resident's transfer to a hospital if the death occurred within seven days of the adult care home's use of physical restraint or physical hold of the resident, and shall notify the Department of Health and Human Services within three days of the death of any resident of the adult care home resulting from violence, accident, suicide, or homicide. The Department may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Department of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Department or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from an adult care home in accordance with subsection (a) of this section, the Department of Health and Human Services shall notify the Governor's Advocacy Council for Persons With Disabilities that a person with a disability has died. The Department shall provide the Council access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The Council shall use the information in accordance with its powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

(c) If the death of a resident of the adult care home occurs within seven days of the adult care home's use of physical restraint or physical hold, the Department shall initiate immediately an investigation of the death.

(d) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department or the Council. In carrying out the requirements of this section, the Department and the Council shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(e) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section. (2000-129, s. 6(a).)

Editor's Note. — Session Laws 2000-129, s. 7, made this section effective January 1, 2001.

Article 5.

Miscellaneous Provisions.

§ 131D-40. Criminal history record checks required for certain applicants for employment.

(a) Requirement; Adult Care Home. — An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. — An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. — If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the adult care home or a contract agency of the adult care home shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the adult care home or the contract agency of the adult care home. If the adult care home or a contract agency of the adult care home disqualifies an applicant after consideration of the relevant factors, then the adult care home or the contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(c) Limited Immunity. — An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. — As used in this section, "relevant offense" means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S.

18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(e) Penalty for Furnishing False Information. — Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. — An adult care home may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The adult care home shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The adult care home shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. — An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section. (1995 (Reg. Sess., 1996), c. 606, s. 2; 1997-125, s. 1; 2000-154, ss. 2.(a), (b).)

Editor's Note. —

Session Laws 2000-154, s. 7, makes the act effective January 1, 2001 and applicable to offenses committed and offers of employment made on and after that date.

Effect of Amendments. — Session Laws 2000-154, ss. 2.(a) and (b), in subsection (a), added the second, third and fourth sentences, and substituted the present sixth sentence for "An adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment"; in subsection (a1), added the second, third and fourth sentences, and substituted the present sixth sentence for "A contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment"; and added subsections (e), (f) and (g). For effective date and applicability, see editor's note.

§ 131D-42. Report on use of restraint.

The Department shall report annually on October 1 to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services the following for the immediately preceding fiscal year:

(1) The level of compliance of each adult care home with applicable State law and rules governing the use of physical restraint and physical hold of residents. The information shall indicate areas of highest and lowest levels of compliance.

(2) The total number of adult care homes that reported deaths under G.S. 131D-34.1, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 131D-34.1, and the number found by the investigation to be related to the adult care home's use of physical restraint or physical hold. (2000-129, s. 6(b).)

Editor's Note. — Session Laws 2000-129, s. 7, made this section effective January 1, 2001.

Chapter 131E.

Health Care Facilities and Services.

Article 1.

General Provisions.

§ 131E-1. Definitions.

OPINIONS OF ATTORNEY GENERAL

The General Assembly did not give any hospital authority the privilege of continuing to operate under the provisions of Chapter 131 after that chapter's repeal. See opinion of Attorney General to Roger Lee Edwards, Attorney and Counselor at Law, N.C. General Assembly, 1999 N.C.A.G. 13 (5/24/99).

Article 2.

Public Hospitals.

Part A. Municipal Hospitals.

§ 131E-8. Sale of hospital facilities to nonprofit corporations.

CASE NOTES

Quoted in Hamlet HMA, Inc. v. Richmond County, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 636 (June 20, 2000).

§ 131E-13. Lease or sale of hospital facilities to or from for-profit or nonprofit corporations or other business entities by municipalities and hospital authorities.

(a) A municipality or hospital authority as defined in G.S. 131E-16(14), may lease, sell, or convey any hospital facility, or part, to a corporation, foreign or domestic, authorized to do business in North Carolina, subject to these conditions, which shall be included in the lease, agreement of sale, or agreement of conveyance:

(1) The corporation shall continue to provide the same or similar clinical hospital services to its patients in medical-surgery, obstetrics, pediatrics, outpatient and emergency treatment, including emergency services for the indigent, that the hospital facility provided prior to the lease, sale, or conveyance. These services may be terminated only as prescribed by Certificate of Need Law prescribed in Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need Law is inapplicable, by review procedure designed to guarantee public participation pursuant to rules adopted by the Secretary of the Department of Health and Human Services.

(2) The corporation shall ensure that indigent care is available to the population of the municipality or area served by the hospital authority at levels related to need, as previously demonstrated and determined mutually by the municipality or hospital authority and the corporation.

(3) The corporation shall not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment.

(4) The corporation shall ensure that admission to and services of the facility are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare) without discrimination or preference because they are beneficiaries of those programs.

(5) The corporation shall prepare an annual report that shows compliance with the requirements of the lease, sale, or conveyance.

The corporation shall further agree that if it fails to substantially comply with these conditions, or if it fails to operate the facility as a community general hospital open to the general public and free of discrimination based on race, creed, color, sex, or national origin unless relieved of this responsibility by operation of law, or if the corporation dissolves without a successor corporation to carry out the terms and conditions of the lease, agreement of sale, or agreement of conveyance, all ownership or other rights in the hospital facility, including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital; provided that any building, land, or equipment associated with the hospital facility that the corporation has constructed or acquired since the sale may revert only upon payment to the corporation of a sum equal to the cost less depreciation of the building, land, or equipment.

This section shall not apply to leases, sales, or conveyances of nonmedical services or commercial activities, including the gift shop, cafeteria, the flower shop, or to surplus hospital property that is not required in the delivery of necessary hospital services at the time of the lease, sale, or conveyance.

(b) In the case of a sale or conveyance, if either general obligation bonds or revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or conveyance, then the corporation shall agree to the following:

By the effective date of sale or conveyance, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section. A hospital which has placed funds in escrow to retire outstanding general obligation or revenue bonds, as provided in this section, shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility if the facility has been sold or conveyed to a corporation, foreign or domestic, authorized to do business in North Carolina.

(c) In the case of a lease, the municipality or hospital authority shall determine the length of the lease. No lease executed under this section shall be deemed to convey a freehold interest. Any sublease or assignment of the lease shall be subject to the conditions prescribed by this section. If the term of the lease is more than 10 years, and either general obligation bonds or revenue bonds issued for the benefit of the hospital to be leased are outstanding at the time of the lease, then the corporation shall agree to the following:

By the effective date of the lease, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

(d) The municipality or hospital authority shall comply with the following procedures before leasing, selling, or conveying a hospital facility, or part thereof:

(1) The municipality or hospital authority shall first adopt a resolution declaring its intent to sell, lease, or convey the hospital facility at a regular meeting on 10 days' public notice. Notice shall be given by publication in one or more papers of general circulation in the affected area describing the intent to lease, sell, or convey the hospital facility involved, known potential buyers or lessees, a solicitation of additional interested buyers or lessees and intent to negotiate the terms of the lease or sale. Specific notice, given by certified mail, shall be given to the local office of each state-supported program that has made a capital expenditure in the hospital facility, to the Department of Health and Human Services, and to the Office of State Budget, Planning, and Management.

(2) At the meeting to adopt a resolution of intent, the municipality or hospital authority shall request proposals for lease or purchase by direct solicitation of at least five prospective lessees or buyers. The solicitation shall include a copy of G.S. 131E-13.
(3) The municipality or hospital authority shall conduct a public hearing on the resolution of intent not less than 15 days after its adoption. Notice of the public hearing shall be given by publication at least 15 days before the hearing. All interested persons shall be heard at the public hearing.
(4) Before considering any proposal to lease or purchase, the municipality or hospital authority shall require information on charges, services, and indigent care at similar facilities owned or operated by the proposed lessee or buyer.
(5) Not less than 45 days after adopting a resolution of intent and not less than 30 days after conducting a public hearing on the resolution of intent, the municipality or hospital authority shall conduct a public hearing on proposals for lease or purchase that have been made. Notice of the public hearings shall be given by publication at least 10 days before the hearing. The notice shall state that copies of proposals for lease or purchase are available to the public.
(6) The municipality or hospital authority shall make copies of the proposals to lease or purchase available to the public at least 10 days before the public hearing on the proposals.
(7) Not less than 60 days after adopting a resolution of intent, the municipality or hospital authority at a regular meeting shall approve any lease, sale, or conveyance by a resolution. The municipality or hospital authority shall adopt this resolution only upon a finding that the lease, sale, or conveyance is in the public interest after considering whether the proposed lease, sale, or conveyance will meet the health-related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons. Notice of the regular meeting shall be given at least 10 days before the meeting and shall state that copies of the lease, sale, or conveyance proposed for approval are available.
(8) At least 10 days before the regular meeting at which any lease, sale, or conveyance is approved, the municipality or hospital authority shall make copies of the proposed contract available to the public.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section or G.S. 131E-23, a hospital authority as defined in G.S. 131E-16(14) or a municipality may lease or sublease hospital land to a corporation or other business entity, whether for profit or not for profit, and may participate as an owner, joint venturer, or other equity participant with a corporation or other business entity for the development, construction, and operation of medical office buildings and other health care or hospital facilities, so long as the municipality, hospital authority, or other entity continues to maintain its primary community general hospital facilities as required by subsection (a) of this section.

(f) A municipality or hospital authority may permit or consent to the pledge of hospital land or leasehold estates in hospital land to facilitate the development, construction, and operation of medical office buildings and other health care or hospital facilities. A municipality or hospital authority also may, as lessee, enter into master leases or agreements to fund for temporary vacancies relating to hospital land or hospital facilities for use in the provision of health care.

(g) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, subleases, sales, or conveyances under this

Chapter. (1983 (Reg. Sess., 1984), c. 1066, s. 1; 1997-233, s. 2; 1997-443, s. 11A.118(a); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subdivision (d)(1).

CASE NOTES

Quoted in Hamlet HMA, Inc. v. Richmond County, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 636 (June 20, 2000).

OPINIONS OF ATTORNEY GENERAL

A county hospital authority may amend or consent to a transfer of its lease subject to the provisions of this section; the authority may not consent to any assignment of the lease unless it first solicits bids from five potential lessees and complies with all of the other substantive and procedural requirements of this section. See opinion of Attorney General to Roger Lee Edwards, Attorney and Counselor at Law, N.C. General Assembly, 1999 N.C.A.G. 13 (5/24/99).

Part B. Hospital Authority.

§ 131E-31. Transfers of property by a city or county to a hospital authority.

OPINIONS OF ATTORNEY GENERAL

County May Limit Hospital's Exercise of Powers in Lease Agreement. — Under this section, a county has the authority to lease hospital property to a hospital authority organized pursuant to the Hospital Authorities Act under a lease that would require the hospital authority to obtain the county's prior written approval before it exercises some of its powers. See opinion of Attorney General to Thomas S. Stukes, Esq. Smith Helms Mulliss & Moore, L.L.P., 1997 N.C.A.G. 51 (8/18/97).

Article 5.

Hospital Licensure Act.

Part D. Medical Review Committee.

§ 131E-95. Medical review committee.

CASE NOTES

The public's qualified constitutional right to attend civil court proceedings did not preclude the trial court, under the facts presented, from giving effect to the protections of this section by sealing peer review materials and closing court proceedings concerning those materials. Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 515 S.E.2d 675 (1999), cert. denied, — U.S. —, 120 S. Ct. 1452, 146 L. Ed. 2d 337 (2000).

This section supplants any North Carolina common law right of public access to information regarding medical committee proceedings and related materials, and newspaper/appellant had, therefore, no common law right of access to such information. Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 515 S.E.2d 675 (1999), cert. denied, — U.S.

—, 120 S. Ct. 1452, 146 L. Ed. 2d 337 (2000).

Scope of Privilege under this section. — Nonpublic documents in the possession of defendant/hospital, pertaining to defendant/doctor's participation in a physician's impairment treatment program, were privileged; the legislature intended to create a broader privilege to information in § 90-21.22 than in peer review statutes such as this section. Sharpe v. Worland, — N.C. App. —, 527 S.E.2d 75, 2000 N.C. App. LEXIS 269 (2000).

Peer review materials submitted by hospital directly to the judge as "confidential," and not filed with the clerk of the court, were properly treated by the trial court, which ordered them sealed and included in the record, thereby providing a record for appellate review. Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 515 S.E.2d 675 (1999), cert. denied, — U.S. —, 120 S. Ct. 1452, 146 L. Ed. 2d 337 (2000).

Documents filed as exhibits attached to plaintiff's complaint entered the public domain for purposes of the Public Records Act, § 132-1 et seq., and the public's right to inspect court records under § 7A-109, and became "public records" once the complaint was filed with the clerk of the court, even though these exhibits would otherwise have been shielded by subsection (b) of this section. Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 515 S.E.2d 675 (1999), cert. denied, — U.S. —, 120 S. Ct. 1452, 146 L. Ed. 2d 337 (2000).

Article 6.

Health Care Facility Licensure Act.

Part A. Nursing Home Licensure Act.

§ 131E-104. Rules and enforcement.

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part.

(b) The Commission shall adopt rules for the operation of the adult care portion of a combination home. The rules shall provide that for each requirement applicable to freestanding adult care homes or freestanding nursing homes, the combination home may choose to operate the adult care portion of the home in compliance with either the requirement applicable to freestanding adult care homes or the higher standard applicable to freestanding nursing homes.

(c) The Department shall enforce the rules adopted or amended by the Commission with respect to nursing homes. (1961, c. 51, s. 3; 1973, c. 476, s. 128; 1981, c. 614, s. 1; 1983, c. 775, s. 1; 1995, c. 535, s. 22; 2000-154, s. 6.1.)

Effect of Amendments. — Session Laws 2000-154, s. 6.1, effective August 2, 2000, in subsection (b), substituted the present second sentence for "that are equal to the rules adopted by the Social Services Commission for the operation of freestanding adult care homes. The adult care portion of a combination home in existence on January 1, 1982, shall be exempt from physical plant minimum standards, unless the Department determines the exemption to be an imminent hazard to health, safety and welfare of the residents."

§ 131E-113. (Effective until September 1, 2001) Immunization of residents.

(a) Except as provided in subsection (e) of this section, a nursing home licensed under this Part shall require residents to be immunized against pneumococcal disease.

(b) Upon admission, a nursing home shall notify the resident of the immunization requirements of this section and shall request that the resident agree to be immunized against pneumococcal disease.

(c) A nursing home shall document the immunization against pneumococcal disease for each resident. Upon finding that a resident is lacking the immu-

§ 131E-113 is set out twice. See notes.

nization, or if the nursing home is unable to verify that the individual has received the required immunization, the nursing home shall provide or arrange for immunization. The immunization and documentation required shall occur not later than November 30 of each year.

(d) For an individual who becomes a resident of the nursing home after November 30 but before March 30 of the following year, the nursing home shall determine the individual's status for the immunization required under this section, and if found to be deficient, the nursing home shall provide the immunization.

(e) No individual shall be required to receive vaccine under this section if the vaccine is medically contraindicated, or if the vaccine is against the individual's religious beliefs, or if the individual refuses the vaccine after being fully informed of the health risks of not being immunized.

(f) Notwithstanding any other provision of law to the contrary, the Health Services Commission shall have the authority to adopt rules to implement the immunization requirements of this section. (2000-112, s. 3.)

Section Set Out Twice. — The section above is effective until September 1, 2001. For the section as amended September 1, 2001, see the following section, also numbered § 131E-113.

Editor's Note. — Session Laws 2000-112, s. 7, made this section effective July 14, 2000.

Session Laws 2000-112, s. 5, directs the Department of Health and Human Services to make available to nursing homes and adult care homes educational and informational materials pertaining to vaccinations required under the act.

§ 131E-113. (Effective September 1, 2001) Immunization of employees and residents.

(a) Except as provided in subsection (e) of this section, a nursing home licensed under this Part shall require residents and employees to be immunized against influenza virus and shall require residents to also be immunized against pneumococcal disease.

(b) Upon admission, a nursing home shall notify the resident of the immunization requirements of this section and shall request that the resident agree to be immunized against influenza virus and pneumococcal disease.

(b1) A nursing home shall notify every employee of the immunization requirements of this section and shall request that the employee agree to be immunized against influenza virus.

(c) A nursing home shall document the annual immunization against influenza virus and the immunization against pneumococcal disease for each resident and each employee, as required under this section. Upon finding that a resident is lacking one or both of these immunizations or that an employee has not been immunized against influenza virus, or if the nursing home is unable to verify that the individual has received the required immunization, the nursing home shall provide or arrange for immunization. The immunization and documentation required shall occur not later than November 30 of each year.

(d) For an individual who becomes a resident of or who is newly employed by the nursing home after November 30 but before March 30 of the following year, the nursing home shall determine the individual's status for the immunizations required under this section, and if found to be deficient, the nursing home shall provide the immunization.

(e) No individual shall be required to receive vaccine under this section if the vaccine is medically contraindicated, or if the vaccine is against the

§ 131E-113 is set out twice. See notes.

individual's religious beliefs, or if the individual refuses the vaccine after being fully informed of the health risks of not being immunized.

(f) Notwithstanding any other provision of law to the contrary, the Health Services Commission shall have the authority to adopt rules to implement the immunization requirements of this section.

(g) As used in this section, "employee" means an individual who is a part-time or full-time employee of the nursing home. (2000-112, ss. 3, 4.)

Section Set Out Twice. — The section above is effective September 1, 2001. For the section as in effect until September 1, 2001, see the preceding section, also numbered § 131E-113.

Effect of Amendments. — Session Laws 2000-112, s. 4, effective September 1, 2001, inserted "employees and" in the section heading; substituted "and employees to be immunized against influenza virus and shall require residents to also be immunized against" for "to be immunized against" in subsection (a); inserted "influenza virus and" in subsection (b); added subsection (b1); in subsection (c), in the first sentence, substituted "annual immunization against influenza virus and the immunization against" for "immunization against" and inserted "and each employee, as required under this section" and substituted "one or both of these immunizations or that an employee has not been immunized against influenza virus" for "the immunization"; in subsection (d), inserted "or who is newly employed by"; and added subsection (g); and made a minor wording change.

§ 131E-114. Special care units; disclosure of information required.

(a) A nursing home or combination home licensed under this Part that provides special care for persons with Alzheimer's disease or other dementias in a special care unit shall make the following disclosures pertaining to the special care provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias. The disclosure shall be made annually, in writing, to all of the following:

(1) The Department, as part of its licensing procedures.

(2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

(1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with dementia.

(2) The process and criteria for placement, transfer, or discharge to or from the special care unit.

(3) The process used for assessment and establishment of the plan of care and its implementation, as required under State and federal law.

(4) Typical staffing patterns and how the patterns reflect the resident's need for increased care and supervision.

(5) Dementia-specific staff training.

(6) Physical environment features designed specifically for the special care unit.

(7) Alzheimer's disease and other dementia-specific programming.

(8) Opportunities for family involvement.

(9) Additional costs or fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosures made by each licensed facility subject to this section.

(d) Nothing in this section shall be construed as prohibiting a nursing home or combination home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias. The disclosures required by this section apply only to a nursing home or combination home that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term "special care unit" means a wing or hallway within a nursing home, or a program provided by a nursing home, that is designated especially for residents with Alzheimer's disease or other dementias, or other special needs disease or condition, as determined by the Medical Care Commission, which may include mental disabilities. (2000-154, s. 6.)

Editor's Note. — Session Laws 2000-154, s. 7, made this section effective January 1, 2001.

This section was enacted as § 131E-113 by Session Laws 2000-154, s. 6. It has been redesignated as § 131E-114 at the direction of the Revisor of Statutes.

Part D. Ambulatory Surgical Facility Licensure.

§ 131E-145. Title; purpose.

CASE NOTES

A certificate of need is not dependent upon the requirement for a license; in fact, the statutes governing licensure of ambulatory surgical facilities (this section et seq.) and those governing certificates of need for new institutional health services (§ 131E-175 et seq.) are independent provisions. Christenbury Surgery Ctr. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 611 (June 6, 2000).

§ 131E-147. Licensure requirement.

CASE NOTES

Expansion Required License But Not New Certificate of Need — The defendant/center was not required to obtain a separate certificate of need to develop additional operating rooms, a recovery room, and necessary ancillary space at a second site within the service area for which it already held a certificate of need although it conceded it needed an additional license. The defendant's proposal was not a "new institutional health service" requiring a certificate of need, but rather, an expansion of an existing health service facility within the limitations permitted by statute. Christenbury Surgery Ctr. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 611 (June 6, 2000).

Article 9.

Certificate of Need.

§ 131E-175. Findings of fact.

CASE NOTES

A certificate of need is not dependent upon the requirement for a license; in fact, the statutes governing licensure of ambulatory surgical facilities (§ 131E-145 et seq.) and those governing certificates of need for new institutional health services (this section) are independent provisions. Christenbury Surgery Ctr. v. North Carolina Health & Human Servs.,

— N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 611 (June 6, 2000).

Full Contested Case Hearing not Precluded by the Statute. — In a Certificate of Need (CON) case, the CON Statute does not preclude a full contested case hearing where an ALJ recommended a summary judgment in a decision based only on each applicant's conformity with the criteria in § 131E-183. A full hearing protects the applicant's due process rights, allows the record to be fully developed, and encourages judicial economy. Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

Cited in Hamlet HMA, Inc. v. Richmond County, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 636 (June 20, 2000).

§ 131E-176. Definitions.

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Air ambulance" means aircraft used to provide air transport of sick or injured persons between destinations within the State.

(1a) "Ambulatory surgical facility" means a facility designed for the provision of a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least two designated operating rooms and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1b) and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.

(1b) "Ambulatory surgical program" means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.

(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 rules of the Department except that single beds in single rooms are counted even if the room contains inadequate square footage. The term "bed capacity" also refers to the number of dialysis stations in kidney disease treatment centers, including freestanding dialysis units.

(2a) "Bone marrow transplantation services" means the process of infusing bone marrow into persons with diseases to stimulate the production of blood cells.

(2b) "Burn intensive care services" means services provided in a unit designed to care for patients who have been severely burned.

(2c) "Campus" means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health service facility and related health care entities.

(2d) "Capital expenditure" means an expenditure for a project, including but not limited to the cost of construction, engineering, and equipment which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance. Capital expenditure includes, in addition, the fair market value of an acquisition made by donation, lease, or comparable arrangement by which a person obtains equipment, the expenditure for which would have been considered a capital expenditure under this Article if the person had acquired it by purchase.

(2e) "Cardiac angioplasty equipment" means the cardiac catheterization equipment used in surgery for the restoration, repair, or reconstruction of coronary blood vessels.

(2f) "Cardiac catheterization equipment" means the equipment required to perform diagnostic procedures or therapeutic intervention in which a catheter is introduced into a vein or artery and threaded through the circulatory system to the heart.

(3) "Certificate of need" means a written order 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) Repealed by Session Laws 1993, c. 7, s. 2.

(5) "Change in bed capacity" means (i) any relocation of health service facility beds, or dialysis stations from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility bed as defined in G.S. 131E-176(9c), or (iii) any increase in the number of health service facility beds, or dialysis stations in kidney disease treatment centers, including freestanding dialysis units.

(5a) "Chemical dependency treatment facility" means a public or private facility, or unit in a facility, which is engaged in providing 24-hour a day treatment for chemical dependency or substance abuse. This treatment may include detoxification, administration of a therapeutic regimen for the treatment of chemically dependent or substance abusing persons and related services. The facility or unit may be:

a. A unit within a general hospital or an attached or freestanding unit of a general hospital licensed under Article 5, Chapter 131E, of the General Statutes,

b. A unit within a psychiatric hospital or an attached or freestanding unit of a psychiatric hospital licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C,

c. A freestanding facility specializing in treatment of persons who are substance abusers or chemically dependent licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C; and may be identified as "chemical dependency, substance abuse, alcoholism, or drug abuse treatment units," "residential chemical dependency, substance abuse, alcoholism or drug abuse facilities," "social setting detoxification facilities" and "medical detoxification facilities," or by other names if the purpose is to provide treatment of chemically dependent or substance abusing persons, but shall not include halfway houses or recovery farms.

(5b) "Chemical dependency treatment beds" means beds that are licensed for detoxification or for the inpatient treatment of chemical dependency. Residential treatment beds for the treatment of chemical dependency or substance abuse are chemical dependency treatment beds.

(6) "Department" means the North Carolina Department of Health and Human Services.

(7) To "develop" when used in connection with health services, means to undertake those activities which will result in the offering of institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

(7a) "Diagnostic center" means a freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology centers, and mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which cost ten thousand dollars ($10,000) or more exceeds five hundred thousand dollars ($500,000). In determining whether the medical diagnostic equipment in a diagnostic center costs more than five hundred thousand dollars ($500,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

(7b) "Expedited review" means the status given to an application's review process when the applicant petitions for the review and the Department approves the request based on findings that all of the following are met:

a. The review is not competitive.
b. The proposed capital expenditure is less than five million dollars ($5,000,000).
c. A request for a public hearing is not received within the time frame defined in G.S. 131E-185.
d. The agency has not determined that a public hearing is in the public interest.

(7c) "Gamma knife" means equipment which emits photon beams from a stationary radioactive cobalt source to treat lesions deep within the brain and is one type of stereotactic radiosurgery.

(8), (9) Repealed by Session Laws 1987, c. 511, s. 1.

(9a) "Health service" means an organized, interrelated medical, diagnostic, therapeutic, and/or rehabilitative activity that is integral to the prevention of disease or the clinical management of a sick, injured, or disabled person. "Health service" does not include administrative and other activities that are not integral to clinical management.

(9b) "Health service facility" means a hospital; psychiatric facility; rehabilitation facility; long term care facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; diagnostic center; oncology treatment center; hospice, hospice inpatient facility, hospice residential care facility; and ambulatory surgical facility.

(9c) "Health service facility bed" means a bed licensed for use in a health service facility in the categories of (i) acute care beds; (ii) psychiatric beds; (iii) rehabilitation beds; (iv) nursing care beds; (v) intermediate care beds for the mentally retarded; (vi) chemical dependency treatment beds; (vii) hospice inpatient facility beds; and (viii) hospice residential care facility beds.

(10) "Health maintenance organization (HMO)" means a public or private organization which has received its certificate of authority under Article 67 of Chapter 58 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 organizations, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(10a) "Heart-lung bypass machine" means the equipment used to perform extra-corporeal circulation and oxygenation during surgical procedures.

(11) Repealed by Session Laws 1991, c. 692, s. 1.

(12) "Home health agency" 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.

(13) "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. The term includes all facilities licensed pursuant to G.S. 131E-77 of the General Statutes.

(13a) "Hospice" means any coordinated program of home care with provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.

(13b) "Hospice inpatient facility" means a freestanding licensed hospice facility or a designated inpatient unit in an existing health service facility which provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients and their families in an inpatient setting. For purposes of this Article only, a hospital which has a contractual agreement with a licensed hospice to provide inpatient services to a hospice patient as defined in G.S. 131E-201(4) and provides those services in a licensed acute care bed is not a hospice inpatient facility and is not subject to the requirements in G.S. 131E-176(5)(ii) for hospice inpatient beds.

(13c) "Hospice residential care facility" means a freestanding licensed hospice facility which provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients and their families in a group residential setting.

(14) Repealed by Session Laws 1987, c. 511, s. 1.

(14a) "Intermediate care facility for the mentally retarded" means facilities licensed pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of providing health and habilitative services based on the developmental model and principles of normalization for persons with mental retardation, autism, cerebral palsy, epilepsy or related conditions.

(14b) Repealed by Session Laws 1991, c. 692, s. 1.

(14c) "Lithotriptor" means extra-corporeal shock wave technology used to treat persons with kidney stones and gallstones.

(14d) "Long term care facility" means a health service facility whose bed complement of health service facility beds is composed principally of nursing care facility beds.

(14e) "Magnetic resonance imaging scanner" means medical imaging equipment that uses nuclear magnetic resonance.

(14f) "Major medical equipment" means a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than seven hundred fifty thousand dollars ($750,000). In determining whether the major medical equipment costs more than seven hundred fifty thousand dollars ($750,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the major medical equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater. Major medical equipment does not include replacement equipment as defined in this section.

(15) Repealed by Session Laws 1987, c. 511, s. 1.

(15a) "Multispecialty ambulatory surgical program" means a formal program for providing on a same-day basis surgical procedures for at least three of the following specialty areas: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopedic, or oral surgery.

(15b) "Neonatal intensive care services" means those services provided by a health service facility to high-risk newborn infants who require constant nursing care, including but not limited to continuous cardiopulmonary and other supportive care.

(16) "New institutional health services" means any of the following:

a. The construction, development, or other establishment of a new health service facility.

b. The obligation by any person of a capital expenditure exceeding two million dollars ($2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service. 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 two million dollars ($2,000,000).

c. Any change in bed capacity as defined in G.S. 131E-176(5).

d. The offering of dialysis services or home health services by or on behalf of a health service facility if those services were not offered within the previous 12 months by or on behalf of the facility.

e. A change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is a change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health service that is to be located in the facility, or portion thereof, that was constructed or developed in the project.

f. The development or offering of a health service as listed in this subdivision by or on behalf of any person:
   1. Bone marrow transplantation services.
   2. Burn intensive care services.
   3. Neonatal intensive care services.
   4. Open-heart surgery services.
   5. Solid organ transplantation services.

f1. The acquisition by purchase, donation, lease, transfer, or comparable arrangement of any of the following equipment by or on behalf of any person:
   1. Air ambulance.
   2. Cardiac angioplasty equipment.
   3. Cardiac catheterization equipment.
   4. Gamma knife.
   5. Heart-lung bypass machine.
   6. Lithotriptor.
   7. Magnetic resonance imaging scanner.
   8. Positron emission tomography scanner.

g. to k. Repealed by Session Laws 1987, c. 511, s. 1.

l. The purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to G.S. 131E-180.

m. Any conversion of nonhealth service facility beds to health service facility beds.

n. The construction, development or other establishment of a hospice, hospice inpatient facility, or hospice residential care facility;

o. The opening of an additional office by an existing home health agency within its service area as defined by rules adopted by the

Department; or the opening of any office by an existing home health agency outside its service area as defined by rules adopted by the Department.

p. The acquisition by purchase, donation, lease, transfer, or comparable arrangement by any person of major medical equipment.

q. The relocation of a health service facility from one service area to another.

r. The conversion of a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or the addition of a specialty to a specialty ambulatory surgical program.

s. The furnishing of mobile medical equipment to any person to provide health services in North Carolina, which was not in use in North Carolina prior to the adoption of this provision, if such equipment would otherwise be subject to review in accordance with G.S. 131E-176(16)(f1.) or G.S. 131E-176(16)(p) if it had been acquired in North Carolina.

t. **(Effective until July 1, 2001)** The relocation or expansion of part or all of an ambulatory surgical facility which requires a new license under Part D of Article 6 of this Chapter, or the relocation and addition of part or all of a hospital operating room to a building other than one within which it is currently located.

(17) "North Carolina State Health Coordinating Council" means the Council that prepares, with the Department of Health and Human Services, the State Medical Facilities Plan.

(17a) "Nursing care" means:

a. Skilled nursing care and related services for residents who require medical or nursing care;

b. Rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or

c. Health-related care and services provided on a regular basis to individuals who because of their mental or physical condition require care and services above the level of room and board, which can be made available to them only through institutional facilities.

These are services which are not primarily for the care and treatment of mental diseases.

(18) To "offer," when used in connection with health services, means that the person holds himself out as capable of providing, or as having the means for the provision of, specified health services.

(18a) "Oncology treatment center" means a facility, program, or provider, other than an existing health service facility that provides services for diagnosis, evaluation, or treatment of cancer and its aftereffects or secondary results and for which the total cost of all the medical equipment utilized by the center, exceeds two hundred fifty thousand dollars ($250,000). In determining whether costs are more than two hundred fifty thousand dollars ($250,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the facility, program, or provider shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

(18b) "Open-heart surgery services" means the provision of surgical procedures that utilize a heart-lung bypass machine during surgery to correct cardiac and coronary artery disease or defects.

(19) "Person" means an individual, a trust or estate, a partnership, a corporation, including associations, joint stock companies, and insur-

ance companies; the State, or a political subdivision or agency or instrumentality of the State.

(19a) "Positron emission tomography scanner" means equipment that utilizes a computerized radiographic technique that employs radioactive substances to examine the metabolic activity of various body structures.

(20) "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 service facility.

(21) "Psychiatric facility" means a public or private facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes and 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.

(22) "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.

(22a) "Replacement equipment" means equipment that costs less than two million dollars ($2,000,000) and is purchased for the sole purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced. In determining whether the replacement equipment costs less than two million dollars ($2,000,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

(23) Repealed by Session Laws 1991, c. 692, s. 1.

(24) Repealed by Session Laws 1993, c. 7, s. 2.

(24a) "Service area" means the area of the State, as defined in the State Medical Facilities Plan or in rules adopted by the Department, which receives services from a health service facility.

(24b) "Solid organ transplantation services" means the provision of surgical procedures and the interrelated medical services that accompany the surgery to remove an organ from a patient and surgically implant an organ from a donor.

(24c) "Specialty ambulatory surgical program" means a formal program for providing on a same-day basis surgical procedures for only the specialty areas identified on the ambulatory surgical facility's 1993 Application for Licensure as an Ambulatory Surgical Center and authorized by its certificate of need.

(25) "State Medical Facilities Plan" means the plan prepared by the Department of Health and Human Services and the North Carolina State Health Coordinating Council, and approved by the Governor.

(26) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1002, s. 9.

(27) Repealed by Session Laws 1987, c. 511, s. 1. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, ss. 1, 2; c. 1127, ss. 24-29; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1002, ss. 1-9; c. 1022, ss. 2, 3; c. 1064, s. 1; c. 1110, ss. 1, 2; 1985, c. 589, ss. 42, 43(a); c. 740, ss. 1, 2, 6; 1985 (Reg. Sess., 1986), c. 1001, s. 2; 1987, c. 34; c. 511, s. 1; 1991, c. 692, s. 1; c. 701, s. 1; 1993, c. 7, s. 2; c. 376, ss. 1-4; 1997-443, s. 11A.118(a); 2000-135, ss. 1, 2.)

Editor's Note. —
Session Laws 2000-135, s. 2, provides that the amendments made by Section 1 of that act become effective July 14, 2000 and are repealed effective July 1, 2001. That act shall not apply to a party involved in litigation pending on or before July 14, 2000.

Effect of Amendments. — Session Laws 2000-135, s. 1, added subdivision (16)t. See editor's note for applicability and effective date.

CASE NOTES

Expansion, Not "New Institutional Health Service" — The defendant/center was not required to obtain a separate certificate of need to develop additional operating rooms, a recovery room, and necessary ancillary space at a second site within the service area for which it already held a certificate of need. The defendant's proposal was not a "new institutional health service" requiring a certificate of need, but rather, an expansion of an existing health service facility within the limitations permitted by statute. Christenbury Surgery Ctr. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 611 (June 6, 2000).

§ 131E-178. Activities requiring certificate of need.

CASE NOTES

Expansion, Not "New Institutional Health Service" — The defendant/center was not required to obtain a separate certificate of need to develop additional operating rooms, a recovery room, and necessary ancillary space at a second site within the service area for which it already held a certificate of need. The defendant's proposal was not a "new institutional health service" requiring a certificate of need, but rather, an expansion of an existing health service facility within the limitations permitted by statute. Christenbury Surgery Ctr. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 611 (June 6, 2000).

§ 131E-181. Nature of certificate of need.

CASE NOTES

Cited in Johnston Health Care Ctr., L.L.C. v. North Carolina Dep't of Human Resources, — N.C. App. —, 524 S.E.2d 352, 2000 N.C. App. LEXIS 20 (2000).

§ 131E-182. Application.

CASE NOTES

Quoted in Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

§ 131E-183. Review criteria.

CASE NOTES

Full Contested Case Hearing not Precluded by the Statute. — In a Certificate of Need (CON) case, the CON Statute does not preclude a full contested case hearing where an ALJ recommended a summary judgment in a decision based only on each applicant's conformity with the criteria in § 131E-183. A full hearing protects the applicant's due process rights, allows the record to be fully developed, and encourages judicial economy. Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

Statutory Criteria Met. — A challenged, successful Certificate of Need application did not violate State and federal Medicaid regulations by overstating its projected Medicaid revenues, nor did it fail in financial feasibility, cost effectiveness, or conformity to statutory criteria contained in this section. Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999).

The N. C. Department of Health and Human Services adhered to the required procedures where it first analyzed each individual certificate of need application to determine the extent to which each application conformed to the statutory criteria, and then entered exhaustive findings with respect to the relative merits of the applications, comparing Medicaid access, costs for services, operating costs, types of services, staffing, and location before concluding that the successful application was comparatively superior. Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999).

Duplication of Services Not a Concern — The Department of Health and Human Services' finding that the successful Certificate of Need (CON) application conformed with subsections (a)(3), (4) and (6) of this section was supported by substantial evidence where the applicant identified 34 of its own patients at another facility who expressed a willingness to transfer their treatment to the proposed facility; where such transfer would not result in a duplication of services but rather better access for current patients; and where an evaluation of the alternatives—(1) relocating stations to develop a new facility at a new site, (2) expansion of the existing facility, and (3) doing nothing—revealed that opening a new center was the most effective alternative although the competing CON applicant already serviced a dialysis center in the city of the proposed new site. Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

Substantial Evidence Supported Conditional Approval. — Substantial evidence existed from which the agency could reasonably find that a Certificate of Need (CON) application for a dialysis center, as conditioned, conformed with Criterion 5 where the financial backer agreed to carry out the project, and the bank's finance officer testified, after the conditional approval, that the backer had access to sufficient funds for their equity contribution. Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

Conditional Approval Not Arbitrary Or Capricious — The agency's decision to conditionally approve a Certificate of Need (CON) application did not constitute arbitrary and capricious decision-making where the services were determined to be needed; where the conditions imposed, as required by Criterion 5, insured that the proposal was consistent with applicable criteria; and where there was substantial evidence from which the agency could reasonably find the application conditionally conforming. Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

Sufficient evidence supported a finding of financial feasibility where the availability of a bank loan was properly evidenced by a letter of interest, where a loan shortfall could be covered by other personal assets, and where "the certificate of need section did not rely on [the availability of a line of credit in the name of a deceased individual] in concluding that there were sufficient funds to finance [the] proposal." Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999).

Financial Commitment Adequately Demonstrated. — Evidence of financial backers' net worth and demonstrated ability to provide $811,362.00 separate and apart from their wives, who had not signed commitment letters, coupled with a certification page by one of the backers describing his "intent to carry out the proposed project" and an affidavit further affirming this intent, when added to evidence demonstrating the ability of the funding sources to provide the funds, were sufficient to show commitment required by this section. Johnston Health Care Ctr., L.L.C. v. North Carolina Dep't of Human Resources, — N.C.

App. —, 524 S.E.2d 352, 2000 N.C. App. LEXIS 20 (2000).

Early Expiration of Credit Line. — Where Certificate of Need applicant's supporting documentation indicated that the bank's line of credit would expire before the proposed project was scheduled to commence, substantial evidence supported the Department of Health and Human Services' finding that the applicant failed to establish the availability and commitment of funds required by this section. Johnston Health Care Ctr., L.L.C. v. North Carolina Dep't of Human Resources, — N.C. App. —, 524 S.E.2d 352, 2000 N.C. App. LEXIS 20 (2000).

Errors and Omissions Did Not Prejudice Competitor. — While the Department of Health and Human Services technically exceeded its authority and jurisdiction and committed errors of law by awarding a Certificate of Need to establish a new dialysis center on the basis of an application that was never shown to be conforming to all applicable criteria, its actions did not prejudice the applicant's competitor because the alleged mistakes and omissions, which were made under a settlement agreement, were corrected by final agency decision. Bio-Medical Applications of N.C., Inc. v. North Carolina Dep't of Human Resources, 136 N.C. App. 103, 523 S.E.2d 677 (1999).

§ 131E-185. Review process.

CASE NOTES

Comments Did Not Constitute Unauthorized Amendment. — Where information provided by a successful applicant for a certificate of need (CON) neither changed its application nor had any impact on the agency's determination that the application met the statutory criteria, its comments were not an unauthorized amendment to the application. Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999).

Conditioned Approval. —
The North Carolina Department of Health and Human Services may find that an application for a Certificate of Need is consistent with the statutory criteria while imposing conditions upon it, especially where those conditions (the provision of documentation showing which financial backer would be responsible for the owner's equity portion of the capital expenses) were not essential to the application's approval. Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999).

Quoted in Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

Cited in Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

§ 131E-186. Decision.

CASE NOTES

Conditioned Approval. — The North Carolina Department of Health and Human Services may find that an application for a Certificate of Need is consistent with the statutory criteria while imposing conditions upon it, especially where those conditions (the provision of documentation showing which financial backer would be responsible for the owner's equity portion of the capital expenses) were not essential to the application's approval. Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999).

The N. C. Department of Health and Human Services adhered to required procedures where it first analyzed each individual certificate of need application to determine the extent to which each application conformed to the statutory criteria, and then entered exhaustive findings with respect to the relative merits of the applications, comparing Medicaid access, costs for services, operating costs, types of services, staffing, and location before concluding that the successful application was comparatively superior. Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999).

Applied in Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

Quoted in Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

§ 131E-187. Issuance of a certificate of need.

CASE NOTES

Conditioned Approval. — The North Carolina Department of Health and Human Services may find that an application for a Certificate of Need is consistent with the statutory criteria while imposing conditions upon it, especially where those conditions (the provision of documentation showing which financial backer would be responsible for the owner's equity portion of the capital expenses) were not essential to the application's approval. Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999).

Quoted in Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

Cited in Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

§ 131E-188. Administrative and judicial review.

CASE NOTES

Full Contested Case Hearing not Precluded by the Statute. — In a Certificate of Need (CON) case, the CON Statute does not preclude a full contested case hearing where an ALJ recommended a summary judgment in a decision based only on each applicant's conformity with the criteria in § 131E-183. A full hearing protects the applicant's due process rights, allows the record to be fully developed, and encourages judicial economy. Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

Cited in Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999).

Article 15.

Health Care Personnel Registry.

§ 131E-256. Health Care Personnel Registry.

(a) The Department shall establish and maintain a health care personnel registry containing the names of all health care personnel working in health care facilities in North Carolina who have:

(1) Been subject to findings by the Department of:

a. Neglect or abuse of a resident in a health care facility or a person to whom home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.

b. Misappropriation of the property of a resident in a health care facility, as defined in subsection (b) of this section including places where home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.

c. Misappropriation of the property of a health care facility.

d. Diversion of drugs belonging to a health care facility or to a patient or client.

e. Fraud against a health care facility or against a patient or client for whom the employee is providing services.

(2) Been accused of any of the acts listed in subdivision (1) of this subsection, but only after the Department has screened the allegation and determined that an investigation is required.

The Health Care Personnel Registry shall also contain all findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a resident in a nursing facility by a nurse aide that are contained in the nurse aide registry under G.S. 131E-255.

(b) For the purpose of this section, the following are considered to be "health care facilities":

(1) Adult Care Homes as defined in G.S. 131D-2.
(2) Hospitals as defined in G.S. 131E-76.
(3) Home Care Agencies as defined in G.S. 131E-136.
(4) Nursing Pools as defined by G.S. 131E-154.2.
(5) Hospices as defined by G.S. 131E-201.
(6) Nursing Facilities as defined by G.S. 131E-255.
(7) State-Operated Facilities as defined in G.S. 122C-3(14)f.
(8) Residential Facilities as defined in G.S. 122C-3(14)e.
(9) 24-Hour Facilities as defined in G.S. 122C-3(14)g.

(c) For the purpose of this section, the following are considered to be "health care personnel":

(1) In an adult care home, an adult care personal aide who is any person who either performs or directly supervises others who perform task functions in activities of daily living which are personal functions essential for the health and well-being of residents such as bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
(2) A nurse aide.
(3) An in-home aide or an in-home personal care aide who provides hands-on paraprofessional services.
(4) Unlicensed assistant personnel who provide hands-on care, including, but not limited to, habilitative aides and health care technicians.

(d) Health care personnel who wish to contest findings under subdivision (a)(1) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice of the Department's intent to place its findings about the person in the Health Care Personnel Registry.

(d1) Health care personnel who wish to contest the placement of information under subdivision (a)(2) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case hearing shall be filed within 30 days of the mailing of the written notice of the Department's intent to place information about the person in the Health Care Personnel Registry under subdivision (a)(2) of this section. Health care personnel who have filed a petition contesting the placement of information in the health care personnel registry under subdivision (a)(2) of this section are deemed to have challenged any findings made by the Department at the conclusion of its investigation.

(d2) Before hiring health care personnel into a health care facility or service, every employer at a health care facility shall access the Health Care Personnel Registry and shall note each incident of access in the appropriate business files.

(e) The Department shall provide an employer or potential employer of any person listed on the Health Care Personnel Registry of the nature of the finding or allegation and the status of the investigation.

(f) No person shall be liable for providing any information for the health care personnel registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the health care personnel registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee.

(g) Health care facilities shall ensure that the Department is notified of all allegations against health care personnel, including injuries of unknown source, which appear to be related to any act listed in subdivision (a)(1) of this section. Facilities must have evidence that all alleged acts are investigated and must make every effort to protect residents from harm while the investigation is in progress. The results of all investigations must be reported to the Department within five working days of the initial notification to the Department.

(h) The North Carolina Medical Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. (1995 (Reg. Sess., 1996), c. 713, s. 3(b); 1998-212, s. 12.16E; 1999-159, s. 1; 2000-55, s. 1.)

Effect of Amendments. — Session Laws 2000-55, s. 1, effective October 1, 2000, rewrote subsection (g).

§ 131E-256.1. Adverse action on a license; appeal procedures.

(a) The Department may suspend, cancel, or amend a license when a facility subject to this Article has substantially failed to comply with this Article or rules adopted under this Article.

(b) Administrative action taken by the Department under this section shall be in accordance with Chapter 150B of the General Statutes. (2000-55, s. 2.)

Editor's Note. — Session Laws 2000-54, s. 7, made this section effective October 1, 2000.

Article 15A.

Public Hospital Personnel Act.

§ 131E-257.2. Privacy of employee personnel records.

OPINIONS OF ATTORNEY GENERAL

Settlement Agreement Not Confidential. — Only medical malpractice settlements in which the State is a party are exempt from disclosure; a settlement agreement, not involving medical malpractice, between a doctor and a State hospital, even one purporting to keep the settlement or related matters confidential, must be released to the requestor in its unredacted form, with the exception of information from the doctor's personnel file which was first gathered by the hospital. See opinion of Attorney General to Mr. Fred M. Carmichael Summrell, Sugg, Carmichael & Ashton, P.A., 1997 N.C.A.G. 68 (11/26/97).

Article 16.

Miscellaneous Provisions.

§ 131E-265. Criminal history record checks required for certain applicants for employment.

(a) Requirement; Nursing Home or Home Care Agency. — An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114.19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. — An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. — If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the nursing home or home care agency, or the contract agency of a nursing home or home care agency, shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the nursing home or home care agency, or the contract agency of the nursing home or home care agency. If a nursing home, home care agency, or contract agency of a nursing home or home care agency disqualifies an applicant after consideration of the relevant factors, then the nursing home, home care agency, or contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(c) Limited Immunity. — An entity and an officer or employee of an entity that, in good faith, complies with this section is not liable for the failure of the entity to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. — As used in this section, the term "relevant offense" has the same meaning as in G.S. 131D-40.

(e) Penalty for Furnishing False Information. — Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. — A nursing home or home care agency may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The nursing home or home care agency shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.
(2) The nursing home or home care agency shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. — An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section. (1995 (Reg. Sess., 1996), c. 606, s. 3; 1997-125, s. 2; 1997-140, s. 4; 2000-154, ss. 3.(a),(b).)

Editor's Note. —
Session Laws 2000-154, s. 7, makes the act effective January 1, 2001 and applicable to offenses committed and offers of employment made on and after that date.

Effect of Amendments. — Session Laws 2000-154, ss. 3(a) and (b), in subsection (a), added the second through fourth sentences, the seventh through ninth sentences, and substituted the present twelfth sentence for "A nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment"; in subsection (a1), added the second, third and fourth sentences and substituted the present sixth sentence for "A contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment"; and added subsections (e), (f) and (g).

Chapter 132.

Public Records.

§ 132-1. "Public records" defined.

Local Modification. — (As to Chapter 132) City of Charlotte: 2000-26, s. 1. By virtue of Session Laws 2000-103, s. 1, Granville: 1993, c. 454, s. 1, should be stricken from the main volume. By virtue of Session Laws 2000-103, s. 6, town of Banner Elk: 1989, c. 318, s. 2(a), as amended by 1993, c. 428, s. 1, should be stricken from the main volume. For additional local modifications to this section, see the main volume.

CASE NOTES

Documents filed as exhibits attached to plaintiff's complaint entered the public domain for purposes of the Public Records Act, and the public's right to inspect court records under § 7A-109, and became "public records" once the complaint was filed with the clerk of the court, even though these exhibits would otherwise have been shielded by § 131E-95(b) of the Hospital Licensure Act. Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 515 S.E.2d 675 (1999), cert. denied, — U.S. —, 120 S. Ct. 1452, 146 L. Ed. 2d 337 (2000).

OPINIONS OF ATTORNEY GENERAL

North Carolina's Northeast Partnership is an "agency" within the meaning of subsection (a) of this section, and accordingly is fully subject to the Public Records Act; the Northeastern North Carolina Regional Economic Development Commission from which it emerged is an agency located administratively in the North Carolina Department of Commerce although it has attempted to remove itself from the Department. See opinion of Attorney General to Melanie Thompson, Fiscal Manager, North Carolina's Northeast Partnership, 1999 N.C.A.G. 9 (3/9/99).

Documents generated by the Department of Administration relating to an internal workplace assessment survey are public records. See opinion of Attorney General to Mr. R. Glen Peterson, General Counsel, N.C. Department of Administration, 1999 N.C.A.G. 5 (1/12/99).

Licensure Procedures. — The application and other information obtained during the Private Protective Services Board's licensure procedure which are not otherwise exempt by law are public records subject to public inspection and examination under § 132-6. See opinion of Attorney General to W. A. "Doc" Hoggard, III PPS Board Administrator Private Protective Services Board, 1997 N.C.A.G. 50 (8/15/97).

Provisional Voters. — Ordinarily, applications to vote provisionally are viewed as public records which must be disclosed pursuant to this Chapter because these documents are separate from ballots and there are a sufficient quantity of provisional ballots so that no vote could be attributed to any particular provisional voter. However, when there is only one provisional voter, that voter has an overriding and personal right to a secret ballot under Article VI, Section 5 of the North Carolina Constitution, and a County Board of Elections is prohibited from disclosing any information that would identify the provisional voter. See opinion of Attorney General to Mr. Stephen T. Gheen, Chairman Gaston County Board of Elections, 1997 N.C.A.G. 67 (11/6/97).

§ 132-1.3. Settlements made by or on behalf of public agencies, public officials, or public employees; public records.

OPINIONS OF ATTORNEY GENERAL

Settlement Resulting from Investigation of Sheriff — A conciliation agreement between an EEOC claimant and a county board of commissioners, resulting from an investigation of the sheriff and involving the appropriation of over $21,000.00, should be made available to the public. See opinion of Attorney General Mr. Charles L. Revelle, III, Assistant Hertford County Attorney, 1998 N.C.A.G. 14 (3/4/98).

Settlement Agreement Not Confidential. — Only medical malpractice settlements in which the State is a party are exempt from disclosure; a settlement agreement, not involving medical malpractice, between a doctor and a State hospital, even one purporting to keep the settlement or related matters confidential, must be released to the requestor in its unredacted form, with the exception of information from the doctor's personnel file which was first gathered by the hospital. See opinion of Attorney General to Mr. Fred M. Carmichael Summrell, Sugg, Carmichael & Ashton, P.A., 1997 N.C.A.G. 68 (11/26/97).

§ 132-6. Inspection and examination of records.

OPINIONS OF ATTORNEY GENERAL

Licensure Procedures. — The application and other information obtained during the Private Protective Services Board's licensure procedure which are not otherwise exempt by law are public records subject to public inspection and examination under this section. See opinion of Attorney General to W. A. "Doc" Hoggard, III PPS Board Administrator Private Protective Services Board, 1997 N.C.A.G. 50 (8/15/97).

§ 132-6.1. Electronic data-processing records.

(a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software.

(b) Every public agency shall create an index of computer databases compiled or created by a public agency on the following schedule:

State agencies by July 1, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option. The form, content, language, and guidelines for the index and the databases to be indexed shall be developed by the Division of Archives and History in consultation with officials at other public agencies.

(c) Nothing in this section shall require a public agency to create a computer database that the public agency has not otherwise created or is not otherwise required to be created. Nothing in this section requires a public agency to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes.

(d) The following definitions apply in this section:

(1) Computer database. — A structured collection of data or documents residing in a database management program or spreadsheet software.

(2) Computer hardware. — Any tangible machine or device utilized for the electronic storage, manipulation, or retrieval of data.

(3) Computer program. — A series of instructions or statements that permit the storage, manipulation, and retrieval of data within an electronic data-processing system, together with any associated documentation. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(4) Computer software. — Any set or combination of computer programs. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(5) Electronic data-processing system. — Computer hardware, computer software, or computer programs or any combination thereof, regardless of kind or origin. (1995, c. 388, s. 3; 2000-71, s. 1.)

Effect of Amendments. — Session Laws 2000-71, s. 1, effective June 30, 2000, substituted "security features of its electronic ... and codes" for "its software security, including passwords" at the end of subsection (c).

OPINIONS OF ATTORNEY GENERAL

Computer software developed by the State with the assistance of a private contractor is not a "record," and its disclosure may cause a breach in software security inconsistent with this section. See opinion of Attorney General to Commissioner Janice Faulkner, North Carolina Division of Motor Vehicles, 1998 N.C.A.G. 25 (5/28/98).

§ 132-9. Access to records.

CASE NOTES

Cited in Multimedia Publishing of N.C., Inc. v. Henderson County, — N.C. App. —, 525 S.E.2d 786, 2000 N.C. App. LEXIS 112 (2000), cert. denied, 351 N.C. 474, — S.E.2d — (2000).

Chapter 135.

Retirement System for Teachers and State Employees; Social Security; Health Insurance Program for Children.

Article 1.

Retirement System for Teachers and State Employees.

§ 135-1. Definitions.

Editor's Note. —
Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, ss. 8.12(g), 8.13(f), and 8.13A(b), all provide: "Effective October 1, 2000, any person who was employed on or before April 1, 2000, and who is still employed on October 1, 2000, as a permanent public school employee whose salary is set by or under this section shall receive a compensation bonus, payable at the end of the employee's first pay date after October 1, 2000, of five hundred dollars ($500.00). For permanent part-time employees, the compensation bonus provided by this section shall be adjusted pro rata. Notwithstanding G.S. 135-1(7a), the compensation bonus provided by this section is not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers' and State Employees' Retirement System.

Session Laws 2000-67, s. 26.12A, as amended by Session Laws 2000-140, s. 90(b), effective July 1, 2000, authorizes a compensation bonus of $500.00 for persons (1) whose salary is set (i) pursuant to the State Personnel Act or (ii) by or under this act, other than Sections 26, 26.1, 26.2, and 26.4, but not under Session Laws 1999-237, s. 28.3(a), G.S. 7A-65(a)(1), G.S. 7A-465(b)(1), G.S. 7A-751, and G.S. 97-78(a), and (2) who was, on or before April 1, 2000, a permanent officer or permanent employee and who was in service on October 1, 2000, with specified guidelines. For permanent part-time employees, the compensation bonus is to be adjusted pro rata. The Director of Budget is authorized to transfer sufficient funds from the Reserve for Compensation Bonus to implement the section. Notwithstanding G.S. 135-1(7a), the compensation bonus provided by the section is not compensation under Article 1 of Chapter 135, the Teachers' and State Employees' Retirement System, and is not to be administered under G.S. 126-7. Any State employee paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule is not to receive the compensation bonus authorized by this section.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

CASE NOTES

Interest Accrual and Compounding. — Consistent with the purposes of subdivision (19) of this section and § 128-21(18), underpayments were found to accrue interest from the date they became due. Furthermore, court found that statutes entitled beneficiaries to interest, not only on the principle due, but also on the accrued or earned interest. Faulkenbury v. Teachers' & State Employees' Retirement Sys., 133 N.C. App. 587, 515 S.E.2d 743 (1999), cert. denied, 351 N.C. 102, — S.E.2d — (1999).

Cited in Wells v. Consolidated Judicial Retirement Sys., — N.C. App. —, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000); Wiebenson v. Board of Trustees, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 627 (June 20, 2000).

§ 135-1.1. Licensing and examining boards.

(a) Any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade or occupation, in its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to cause its employees so employed prior to July 1, 1983 to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such board's paying all of the employer's contributions or matching funds from funds of the board and on such board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such board may also be effected to the extent that such board requests provided the board pays all of the employer's contributions or matching funds necessary for such purpose and provided said board collects from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the Board of Trustees of the Retirement System determines, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds.

(b) Notwithstanding any other provision of this Chapter, any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade, or occupation, and who is subject to the provisions of the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes, may make an irrevocable election by appropriate resolution of the board, on or before October 1, 2000, to become an employer in the Teachers' and State Employees' Retirement System. Retirement System coverage shall be conditioned on the board's payment of all of the employer's contributions or matching funds from funds of the board and on the board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the rules of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Any person who is an employee of the board on the date the board makes an irrevocable election to participate in the Retirement System may purchase creditable service for periods of employment with the board prior to the election by making a lump-sum payment equal to the full cost of the service credits calculated on the basis of the assumptions used for the 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 a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. (1959, c. 1012; 1983, c. 412, s. 3; 2000-187, s. 1.)

Effect of Amendments. — Session Laws 2000-187, s. 1, effective July 1, 2000, designated the former undesignated paragraph as present subsection (a) and added subsection (b).

§ 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. Under such rules and regulations as the Board of Trustees may establish and promulgate, Cooperative Agricultural Extension Service employees excluded from coverage under Title II of the Social Security Act 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 excluded from coverage under Title II of the Social Security Act 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 excluded from coverage under Title II of the Social Security Act 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; provided further, that effective July 1, 1985, an extension service employee excluded from coverage under Title II of the Social Security Act who is employed in part by a county and who is compensated in whole by the Cooperative Agricultural Extension Service pursuant to a contract where the Cooperative Agricultural Extension Service is reimbursed by the county for the county's share of the compensation shall participate exclusively in the Teachers' and State Employees' Retirement System to the extent of their full compensation. 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. At such time as Cooperative Agricultural Extension Service Employees excluded from coverage under Title II of the Social Security Act become covered by Title II of the Social Security Act, such employees shall no longer be covered by the provisions of this section, provided no accrued rights of these employees under this section prior to coverage by Title II of the Social Security Act shall be diminished.

(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.

Notwithstanding the foregoing, any persons whose membership was terminated under the provisions set forth above who had five or more years of creditable service and had not effected a return of contributions may elect to receive a retirement allowance on or after age 60; provided that this member may retire only upon written application to the Board of Trustees setting forth at which time, not less than 30 days nor more than 90 days subsequent to the execution and filing, he desires to be retired.

(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) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1.

(7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963, and who became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 135-5(b) as in effect at the date of such retirement.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b), subdivisions (1), (2) and (3).

b. In lieu of the benefits provided in paragraph a of this subdivision (7) any member who separates from service on or after July 1, 1951, and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July 1, 1951, and prior to the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, subsequent to July 1, 1951, and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

d. Should a teacher or employee who retired on an early or service retirement allowance be restored to service prior to the attainment of the age of 62 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to the allowance described in 1 below reduced by the amount in 2 below.
   1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
   2. The actuarial equivalent of the retirement benefits he previously received.

e. Should a teacher or employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of his retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1, and ending December 31) will not exceed the member's 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 subsection (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 one day 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 service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer. 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 one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

Age at Retirement	*Percentage Reduction*
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only 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 one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.

b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only 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 one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.

b3. Vested deferred retirement allowance of members retiring on or after July 1, 1994. — In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or 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 one day 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 service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.

c. **(Effective until June 30, 2003)** Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount in any calendar year which exceeds fifty percent (50%) of the reported

§ 135-3(8)c is set out twice. See notes.

compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension 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 a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S 135-3(8)c., who has been retired at least 12 months and has not been employed in any capacity, except as a substitute teacher, with a public school for at least 12 months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach on a substitute, interim, or permanent basis in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment.

c. **(Effective June 30, 2003)** Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension 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 a percent (1⁄10 of 1%).

d. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.

e. Any beneficiary who retired on an early or service retirement allowance as an employee of any State department, agency or institution under the Law Enforcement Officers' Retirement System and becomes employed as an employee by a State department, agency, or institution as an employer participating in the Retirement System shall become subject to the provisions of G.S. 135-3(8)c and G.S. 135-3(8)d on and after January 1, 1989.

(8a) Notwithstanding the provisions of paragraphs c and d of subdivision (8) to the contrary, a beneficiary who was a beneficiary retired on an early or service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by the State and beneficiaries last employed by the State to this Retirement System on January 1, 1985, and who also was a contributing member of this Retirement System on January 1, 1985, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership.

(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. 91/2; 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; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 228, 229, 236; c. 1106, ss. 1, 2, 4; 1985, c. 520, s. 1; c. 649, ss. 2, 11; 1987, c. 513, s. 1; c. 738, s. 38(b); 1989, c. 791; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(e), (f), 7.31(d), (e); 1995, c. 509, s. 73.1; 1998-212, s. 28.24(a); 1998-217, s. 67; 2000-67, s. 8.24(a).)

Subdivision (8)c Set Out Twice. — The first version of subdivision (8)c set out above is effective until June 30, 2003. The second version of subdivision (8)c set out above is effective June 30, 2003.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 8.24(a), effective July 1, 2000, rewrote subdivision (8)c as in effect until June 30, 2003.

CASE NOTES

Constitutionality of Subsection (8)d. — Because all retired officers and employees are subject to the provisions of subsection (8)d of this section, plaintiff retired judge was not treated differently than similarly situated persons, and the Retirement System's interpretation of subsection (8)d did not violate the Equal Protection Clause of either the United States or the North Carolina Constitution. Wells v. Consolidated Judicial Retirement Sys., — N.C. App. —, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000).

Suspension of Benefits under Subsection (8)d. — In case involving suspension of plaintiff retired judge's retirement benefits after he was appointed to another state office, where the prohibition contained in subsection (8)d of this section existed as former (8)c when plaintiff's rights vested in the Retirement System, the prohibition applied to plaintiff, and plaintiff's contract under Chapter 135 provided that his benefits would cease if he returned to employment with the State of North Carolina following his retirement from the court. Wells v. Consolidated Judicial Retirement Sys., — N.C. App. —, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000).

§ 135-5. 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 one day 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) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Any member who was in service October 8, 1981, who had attained 60 years of age, 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 one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity

or who attains age 55 and completes five or more years of creditable service in this capacity, 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 one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later.

(a1) Early Service Retirement Benefits. — Any member may retire and receive a reduced retirement allowance 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 one day 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 50 years and have at least 20 years of creditable service.

(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 (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 fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service 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 (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 (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(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 (⅓ 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 (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) 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 (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-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 (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b5) Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1975, but prior to July 1, 1977, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b6) Service Retirement 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 (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b7) Service Retirement Allowance of Members Retiring on or after July 1, 1980, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1980, but prior to July 1, 1985, 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 (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) 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).

(b8) Service Retirement Allowance of Law-Enforcement Officers Retiring on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985]. — Upon retirement from service, in accordance with subsection (a) of this section, on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985], a member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-seven one 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 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

(1) A member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in a. above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and fifty-eight hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 or more years of creditable service, his retirement allowance shall be computed as in a. above but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's service retirement date occurs before his 60th birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in b. above.

d. 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).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1993. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1993, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b., c., and d.

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1993, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1993, but before July 1, 1994, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.
   b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the allowance shall be computed as in G.S. 135-5(b14)(1)a., but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.
   b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 135-5(b14)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
   c. If the member's service retirement date occurs before his 60th birthday and prior to the completion of 30 or more years of creditable service, the service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b14)(2)b.
   d. 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).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a

law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b15)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b15)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. but reduced by the sum of five-twelfths of one percent (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 the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance provided by G.S. 135-5(b14)(2)c.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b16) Service Retirement Allowance of Members Retiring on or After July 1, 1995, but Before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b16)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b16)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. but reduced by the sum of five-twelfths of one

percent (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 the month the member would have attained his 60th birthday, plus one-quarter of one percent (1/4 of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b16)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b17) Service Retirement Allowance of Members Retiring on or After July 1, 1997, but Before July 1, 2000. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 2000, a member shall receive the following service retirement allowance.

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b17)(1)a, reduced by one-third of one percent (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 the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after this 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b17)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 12%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b17)(2)b.

d. Nothwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b18) Service Retirement Allowance of Members Retiring on or After July 1, 2000. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, a member shall receive the following service retirement allowance.

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b18)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b18)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. but reduced by the sum of five-twelfths of one percent (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 the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b18)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988. — The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. 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 one day nor 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.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a fifty percent (50%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(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 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.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982, Who Left Service prior to January 1, 1988. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member who left service prior to January 1, 1988 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. — The provisions of this subsection shall be applicable to members retired on a disability retirement allowance and shall not be applicable to members in service on or after January 1, 1988. 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. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(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.

(3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an 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. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(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.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law-Enforcement Officers' Retirement System and becomes employed as an employee other than as a law-enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this subsection. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this subsection.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(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 the date of termination of service, 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. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disability benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection.

(f1) Expired.

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide 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 nomination. Any member having elected Options 2, 3, 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, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 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.

Option 5. For Members Retiring Prior to July 1, 1993. — The member may elect 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 1/120 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.

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.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree 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 retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree 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 such payment falls due, otherwise to the retiree's legal representative.

(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.

(*l*) Death Benefit Plan. — There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars ($25,000) and to a maximum of fifty thousand dollars ($50,000). 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 the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

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, but before January 1, 1987, 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 be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

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.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(*l*1) Reciprocity of Death Benefit Plan. — Only for the purpose of determining eligibility for the death benefit provided for in subsection (*l*) of this section, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and

State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time. In no event shall a death benefit provided for in G.S. 135-5(*l*) be paid if a death benefit is paid under G.S. 135-63.

(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 the following conditions apply:

(1)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or

b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b18)(1)b. or G.S. 135-5(b18)(2)c., notwithstanding the requirement of obtaining age 50.

(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.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (*l*) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

(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:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
1.50 to 2.49%	2%

Increase In Index	*Increase In Allowance*
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.

Notwithstanding the above paragraphs, retired members and beneficiaries may receive cost-of-living increases in retirement allowances if active members of the system receive across-the-board cost-of-living salary increases. Such increases in post-retirement allowances shall be comparable to cost-of-living salary increases for active members in light of the differences between the statutory payroll deductions for State retirement contributions, Social Security taxes, State income withholding taxes, and federal income withholding taxes required of each group. The increases for retired members shall include the cost-of-living increases provided in this section. The cost-of-living increases allowed retired and active members of the system shall be comparable when each group receives an increase that has the same relative impact upon the net disposable income of each group.

(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:

Year(s) in Which Benefits Commenced	*Percentage*
1969	1
1968	4

Year(s) in Which Benefits Commenced	*Percentage*
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.

(ff) From and after July 1, 1982, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1981, shall be increased by one-tenth of one percent (0.1%) of the allowance payable on July 1, 1981.

(gg) From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by two and one-half percent (2.5%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (o) of this section, plus an additional one and one-half percent (1.5%) of the allowance payable on July 1, 1982, in order to supplement the increase payable in accordance with subsection (o) of this section.

(hh) Notwithstanding any other provision of this Chapter, from and after July 1, 1983, the retirement allowance payable to each teacher and State employee, who retired prior to July 1, 1973, and who is in receipt of a reduced retirement allowance based upon 30 or more years of contributing membership service, shall be increased by the elimination of the reduction factors applicable at the time of their retirement under G.S. 135-3(8) or G.S. 135-5(b3). The provisions of this subsection shall apply equally to the allowance of a surviving annuitant of a beneficiary.

(ii) From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1983, in accordance with G.S. 135-5(o), plus an additional four and two-tenths percent (4.2%) of the allowance payable on July 1, 1983.

(jj) Increase in Allowance Where Retirement Commenced on or before July 1, 1984, or after that Date, but before June 30, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(kk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable under subsection (o) of this section or otherwise granted by act of the 1985 Session of the General Assembly.

(*ll*) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(mm) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(nn) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(oo) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(pp) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(qq) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(rr) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ss) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(tt) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992. — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(uu) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(vv) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1993. — From and after July 1, 1993, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1993, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1993. This allowance shall be calculated on the allowance payable and in effect on June 30, 1993, so as not to be compounded on any other increase granted by act of the 1993 General Assembly.

(ww) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(xx) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase granted by act of the 1993 General Assembly, 1994 Regular Session.

(yy) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on

July 1, 1993, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(zz) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(aaa) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase granted by act of the 1995 General Assembly.

(bbb) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 135-5(o). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ccc) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1977, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(ddd) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997. — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase granted by act of the 1997 General Assembly.

(eee) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(fff) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(ggg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2000. — From and after July 1, 2000, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2000, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase granted by act of the 1999 General Assembly, 2000 Regular Session.

(hhh) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000. (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; 1981 (Reg. Sess., 1982), c. 1282, s. 11; 1983, c. 467; c. 761, ss. 218, 219, 228, 229; c. 902, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1034, ss. 222, 232-235, 237; c. 1049, ss. 1-3; 1985, c. 348, s. 2; c. 479, ss. 189(a), 190, 191, 192(a), 194; c. 520, s. 2; c. 649, ss. 8, 10; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a); c. 824, s. 3; 1987 (Reg. Sess., 1988), c. 1061, s. 1; c. 1086, s. 22(a); c. 1108, s. 1; c. 1110, ss. 1-3; 1989, c. 717, ss. 1-6; c. 731, s. 1; c. 752, s. 41(a); c. 770, s. 31; c. 792, ss. 3.1-3.3; 1989 (Reg. Sess., 1990), c. 1077, ss. 2-5; 1991 (Reg. Sess., 1992), c. 766, s. 2; c. 900, ss. 52(a)-(c), 53(b); 1993, c. 321, ss. 74(c)-(e), 74.1(e), (f), 74.2(a); c. 531, s. 5; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(g)-(j), (m), (r); 1995, c. 507, ss. 7.22(a), 7.23(a), (b), 7.23A(a), (b); c. 509, ss. 74, 75; 1996, 2nd Ex. Sess., c. 18, s. 28.21(a); 1997-443, s. 33.22(a)-(d); 1998-153, s. 21(a); 1998-212, ss. 28.26(c), 28.27(a); 1999-237, s. 28.23(a); 2000-67, ss. 26.20(a)-(d).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 26.20(a)-(d), effective July 1, 2000, in subsection (b17), substituted "After July 1, 1997, but Before July 1, 2000" for "After July 1, 1997" and inserted "but before July 1, 2000"; added subsections (b18), (ggg) and (hhh); and substituted "G.S. 135-5(b18)(1)b. or G.S. 135-5(b18)(2)c." for "G.S. 135-5(b17)(1)b. or G.S. 135-5(b17)(2)c." in subdivision (m)(1)b.

§ 135-5.1. Optional retirement program for State institutions of higher education.

CASE NOTES

Quoted in Patterson ex rel. Jordan v. Patterson, — N.C. App. —, 529 S.E.2d 484, 2000 N.C. App. LEXIS 505 (2000).

OPINIONS OF ATTORNEY GENERAL

The legislative intent expressed in this section is ambiguous. — In light of that ambiguity and the Board of Governors' obligations to implement and administer the Optional Retirement Program (ORP), the policies and rules that the Board of Governors has adopted to clarify the description of persons eligible to participate in the ORP are reasonable. See opinion of Attorney General to Mr. Roy A. Carroll, Senior Vice President and Vice President for Academic Affairs, The University of North Carolina General Administration, 1999 N.C.A.G. 1 (2/4/99).

§ 135-9. Exemption from garnishment, attachment, etc.

CASE NOTES

This section and § 50-20(b)(3) do not require entry of a Qualified Domestic Relations Order to assign a retirement plan; therefore, the plain language of a property settlement agreement incorporated into a consent order served to secure ex-wife's twenty percent interest in her ex-husband's state university retirement plan. Patterson ex rel. Jordan v. Patterson, — N.C. App. —, 529 S.E.2d 484, 2000 N.C. App. LEXIS 505 (2000).

Stated in Wells v. Consolidated Judicial Retirement Sys., — N.C. App. —, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000).

§ 135-16.1. Blind or visually impaired employees.

(a) On July 1, 1971, all blind or visually impaired employees employed by the Department of Health and Human Services shall be enrolled as members of the Teachers' and State Employees' Retirement System. All such employees shall be given full credit for all service theretofore as employees of the Department of Health and Human Services. All retired employees drawing or receiving benefits from and under the private retirement plan purportedly created on December 6, 1966, by the Bureau of Employment for the Blind Division pursuant to a trust agreement purportedly entered into with a private banking institution as trustee shall continue to be paid by the Teachers' and State Employees' Retirement System benefits in the same amount which they purportedly were entitled to under the private retirement plan and trust agreement, except that such retired persons shall be eligible for such annual cost-of-living increases as may be provided for retirement members of the

Teachers' and State Employees' Retirement System under the provisions of this Article.

(b) Upon the enrollment of the employees in the Teachers' and State Employees' Retirement System, the purported private retirement plan and trust agreement hereinabove referred to shall be dissolved and terminated.

(c) Notwithstanding the foregoing, blind persons licensed by the State and operating vending facilities under contract with the Department of Health and Human Services, Division of Services for the Blind and its successors, hereinafter referred to as licensed vendors, so licensed on and after October 1, 1983, shall not be members of the Retirement System. All licensed vendors in service or who are members of the Retirement System before October 1, 1983, shall make an irrevocable election to do one of the following:

(1) Continue contributing membership service as if an employee under the same conditions and requirements as are otherwise provided, and have the rights of a member to all benefits and a retirement allowance;

(2) Receive a return of accumulated contributions with cessation of contributing membership service, under G.S. 135-5(f), and in any event with regular interest regardless of membership service; or

(3) Terminate contributing membership service and be entitled alternatively to the benefits and allowances provided under G.S. 135-3(8) or 135-5(a). (1971, c. 1025, s. 3; 1973, c. 476, s. 143; 1983, c. 867, s. 3; 1997-443, s. 11A.118(a); 2000-121, s. 28.)

Effect of Amendments. — Session Laws 2000-121, s. 28, effective July 14, 2000, substituted "impaired employees" for "handicapped employees" in the section heading and in subsection (a).

Article 3.

Other Teacher, Employee Benefits; Child Health Benefits.

Part 2. Administrative Structure.

§ 135-39.3. Oversight team.

(a) The Committee on Employee Hospital and Medical Benefits may use employees of the Legislative Services Office and may employ contractual services as approved by the Legislative Services Commission to monitor the Executive Administrator and Board of Trustees, the Claims Processor, and the Comprehensive Major Medical Plan. The Director of the Budget may use employees of the Office of State Budget, Planning, and Management to monitor the Executive Administrator and Board of Trustees, the Claims Processor, and the Comprehensive Major Medical Plan. Such assistance to the Committee on Employee Hospital and Medical Benefits and to the Director of the Budget shall comprise an oversight team.

(b) The oversight team shall, jointly or individually, have access to all records of the Board of Trustees, the Executive Administrator, the Claims Processor, and the Comprehensive Major Medical Plan. They shall, jointly or individually, be entitled to attend all meetings of the Board of Trustees.

(c) The oversight team shall report to the Committee on Employee Hospital and Medical Benefits when requested by the Committee. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 47, 67; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (a).

§ 135-39.4A. Executive Administrator.

(a) The Plan shall have an Executive Administrator.

(b) The Executive Administrator shall be appointed by the Commissioner of Insurance. The term of employment and salary of the Executive Administrator shall be set by the Commissioner of Insurance upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits.

The Executive Administrator may be removed from office by the Commissioner of Insurance, upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits, and any vacancy in the office of Executive Administrator may be filled by the Commissioner of Insurance with the term of employment and salary set upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits.

(c) to (e) Repealed by Session Laws 1987, c. 857, s. 5.

(f) The Executive Administrator may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator and the Board of Trustees in carrying out their duties and responsibilities under this Article. The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of his duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Claims Processor or with an optional prepaid hospital and medical benefit plan or with a preferred provider of institutional or professional hospital and medical care or with a pharmacy benefit manager shall be done only after consultation with the Committee on Employee Hospital and Medical Benefits.

(g) The Executive Administrator shall be responsible for:

(1) Cost management programs;
(2) Education and illness prevention programs;
(3) Training programs for Health Benefit Representatives;
(4) Membership functions;
(5) Long-range planning;
(6) Provider and participant relations; and
(7) Communications.

(h) The Executive Administrator shall make reports and recommendations on the Plan to the President of the Senate, the Speaker of the House of Representatives and the Committee on Employee Hospital and Medical Benefits. (1985, c. 732, s. 10; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1987, c. 857, s. 5; 1991, c. 427, s. 2; 2000-141, s. 2.)

Effect of Amendments. — Session Laws 2000-141, s. 2, effective August 2, 2000, inserted "or with a pharmacy benefit manager" in subsection (f).

§ 135-39.5. Powers and duties of the Executive Administrator and Board of Trustees.

The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall have the following powers and duties:

(1) Supervising and monitoring of the Claims Processor.
(2) Providing for enrollment of employees in the Plan.
(3) Communicating with employees enrolled under the Plan.

(4) Communicating with health care providers providing services under the Plan.
(5) Making payments at appropriate intervals to the Claims Processor for benefit costs and administrative costs.
(6) Conducting administrative reviews under G.S. 135-39.7.
(7) Annually assessing the performance of the Claims Processor.
(8) Preparing and submitting to the Governor and the General Assembly cost estimates for the health benefits plan, including those required by Article 15 of Chapter 120 of the General Statutes.
(9) Recommending to the Governor and the General Assembly changes or additions to the health benefits program and health care cost containment programs, together with statements of financial and actuarial effects as required by Article 15 of Chapter 120 of the General Statutes.
(10) Working with State employee groups to improve health benefit programs.
(11) Repealed by Session Laws 1985, c. 732, s. 9.
(12) Determining basis of payments to health care providers, including payments in accordance with G.S. 58-50-56.
(13) Requiring bonding of the Claims Processor in the handling of State funds.
(14) Repealed by Session Laws 1985, c. 732, s. 7.
(15) In case of termination of the contract under G.S. 135-39.5A, to select a new Claims Processor, after competitive bidding procedures approved by the Department of Administration.
(16) Notwithstanding the provisions of Part 3 of this Article, to formulate and implement cost-containment measures which are not in direct conflict with that Part.
(17) Implementing pilot programs necessary to evaluate proposed cost containment measures which are not in direct conflict with Part 3 of this Article, and expending funds necessary for the implementation of such programs.
(18) Authorizing coverage for alternative forms of care not otherwise provided by the Plan in individual cases when medically necessary, medically equivalent to services covered by the Plan, and when such alternatives would be less costly than would have been otherwise.
(19) Establishing and operating a hospital and other provider bill audit program and a fraud detection program.
(20) Determining administrative and medical policies that are not in direct conflict with Part 3 of this Article upon the advice of the Claims Processor and upon the advice of the Plan's consulting actuary when Plan costs are involved.
(21) Supervising the payment of claims and all other disbursements under this Article, including the recovery of any disbursements that are not made in accordance with the provisions of this Article.
(22) Implementing and administering a program of long-term care benefits pursuant to Part 4 of this Article.
(23) Implementing and administering a program of child health insurance benefits pursuant to Part 5 of this Article.
(24) Implementing and administering a case management and disease management program.
(25) Implementing and administering a pharmacy benefit management program through a third-party contract awarded after receiving competitive quotes. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 2; 1985, c. 732, ss. 7, 9, 23, 24, 50; 1985 (Reg. Sess., 1986), c. 1020, ss. 3, 20; 1987, c. 857, ss. 6, 7; 1987 (Reg. Sess., 1988), c. 1091, s. 5;

1989, c. 752, s. 22(a); 1991, c. 427, s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 10.3; 1997-468, s. 2; 1997-519, s. 3.15; 1998-1, s. 4(c); 2000-141, s. 3.)

Effect of Amendments. —
Session Laws 2000-141, s. 3, effective August 2, 2000, added subdivisions (24) and (25).

Part 3. Comprehensive Major Medical Plan.

§ 135-40.2. Eligibility.

(a) The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-40.3:

(1) All permanent full-time employees of an employing unit who meet the following conditions:
 a. Paid from general or special State funds, or
 b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage.

 Employees of State agencies, departments, institutions, boards, and commissions not otherwise covered by the Plan who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

(1a) Permanent hourly employees as defined in G.S. 126-5(c4) who work at least one-half of the workdays of each pay period.

(2) Retired teachers, State employees, members of the General Assembly, and retired State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985.

(2a) Surviving spouses of:
 a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and
 b. Deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.

(3) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(b).

(3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(4) Members of the General Assembly.

(5) Notwithstanding the provisions of subsection (e) of this section, employees on official leave of absence while completing a full-time program in school administration in an approved program as a Principal Fellow in accordance with Article 5C of Chapter 116 of the General Statutes.

(6) Notwithstanding the provisions of G.S. 135-40.11, employees formerly covered by the provisions of this section, other than retired employees, who have been employed for 12 or more months by an employing unit and whose jobs are eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities, provided the employees were covered by the Plan at the time of separation from service resulting from a job elimination. Employees covered by this subsection shall be covered for a period of up to 12 months following a separation from service because of a job elimination.

(7) Any member enrolled pursuant to subdivision (1) or (1a) of this subsection who is on approved leave of absence with pay or receiving workers" compensation.

(8) Employees on approved Family and Medical Leave.

(a1) Repealed by Session Laws 2000-141, s. 6(b), effective August 2, 2000, and by Session Laws 2000-184, s. 1(b), effective August 1, 2000.

(b) The following person shall be eligible for coverage under the Plan, on a fully contributory basis, subject to the provisions of G.S. 135-40.3:

(1) Repealed by Session Laws 1983, c. 761, s. 255.

(2) Former members of the General Assembly who enroll before October 1, 1986.

(2a) For enrollments after September 30, 1986, former members of the General Assembly if covered under the Plan at termination of membership in the General Assembly. To be eligible for coverage as a former member of the General Assembly, application must be made within 30 days of the end of the term of office. Only members of the General Assembly covered by the Plan at the end of the term of office are eligible. If application is not made within the specified time period, the member forfeits eligibility.

(3) Surviving spouses of deceased former members of the General Assembly who enroll before October 1, 1986.

(3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(3b) For enrollments after September 30, 1986, surviving spouses of deceased former members of the General Assembly, if covered under the Plan at the time of death of the former member of the General Assembly.

(4) All permanent part-time employees (designated as half-time or more) of an employing unit who meets the conditions outlined in subdivision (a)(1)a above, and who are not covered by the provisions of G.S. 135-40.2(a)(1).

(4a) Repealed by Session Laws 1997-512, s. 22.

(5) The spouses and eligible dependent children of enrolled teachers, State employees, retirees, former members of the General Assembly, former employees covered by the provisions of G.S. 135-40.2(a)(6), Disability Income Plan beneficiaries, enrolled continuation members, and members of the General Assembly. Spouses of surviving dependents are not eligible, nor are dependent children if they were not covered at the time of the member's death. Surviving spouses may cover their dependent children provided the children were enrolled at the time of the member's death or enroll within 30 days of the member's death.

(6) Blind persons licensed by the State to operate vending facilities under contract with the Department of Health and Human Services, Division of Services for the Blind and its successors, who are:

a. Operating such a vending facility;

b. Former operators of such a vending facility whose service as an operator would have made these operators eligible for an early or service retirement allowance under Article 1 of this Chapter had they been members of the Retirement System; and

c. Former operators of such a vending facility who attain five or more years of service as operators and who become eligible for and receive a disability benefit under the Social Security Act upon cessation of service as an operator.

Spouses, dependent children, surviving spouses, and surviving dependent children of such members are not eligible for coverage.

(7) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(j).

(8) Surviving spouses of deceased retirees and surviving spouses of deceased teachers, State employees, and members of the General Assembly provided the death of the former Plan member occurred after September 30, 1986, and the surviving spouse was covered under the Plan at the time of death.

(9) Repealed by Session Laws 1987, c. 857, s. 11.1.

(10) Any eligible dependent child of the deceased retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, provided the child was covered at the time of death of the retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, (or was in posse at the time and is covered at birth under this Part), or was covered under the Plan on September 30, 1986. An eligible surviving dependent child can remain covered until age 19, or age 26 if a full-time student, or indefinitely if certified as incapacitated under G.S. 135-40.1(3)b.

(11) Repealed by Session Laws 2000-141, s. 6(b), effective August 2, 2000, and by Session Laws 2000-184, s. 1(b), effective August 1, 2000.

(12) Notwithstanding the provisions of G.S. 135-40.11, former employees covered by the provisions of G.S. 135-40.2(a)(6), and their spouses and eligible dependent children who were covered by the Plan at the time of the former employees' separation from service pursuant to G.S. 135-40.2(a)(6), following expiration of the former employees' coverage provided by G.S. 135-40.2(a)(6).

(13) Firemen, rescue squad workers, and members of the national guard, their eligible spouses, and eligible dependent children.

(c) No person shall be eligible for coverage as a dependent if eligible as an employee or retired employee, except when a spouse is eligible on a fully contributory basis. In addition, no person shall be eligible for coverage as a dependent of more than one employee or retired employee at the same time.

(d) Former employees who are receiving disability retirement benefits or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes, provided the former employee has at least five years of retirement membership service, shall be eligible for the benefit provisions of this Plan, as set forth in this Part, on a noncontributory basis. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits or disability income benefits pursuant to Article 6 of this Chapter.

(e) Employees on official leave of absence without pay may elect to continue this group coverage at group cost provided that they pay the full employee and employer contribution through the employing unit during the leave period.

(f) 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 Plan the full cost of providing these benefits under this section as determined by the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan. In addition, each association, organization or board shall pay to the Plan 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.

(g) An eligible surviving spouse and any eligible surviving dependent child of a deceased retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary shall be eligible for group benefits under this section without waiting periods for preexisting conditions provided coverage is elected within 90 days after the death of the former plan member. Coverage may be elected at a later time, but will be subject to the 12-month waiting period for preexisting conditions and will be effective the first day of the month following receipt of the application.

(h) No person shall be eligible for coverage as an employee or retired employee or as a dependent of an employee or retired employee upon a finding by the Executive Administrator or Board of Trustees or by a court of competent jurisdiction that the employee or dependent knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan. The Executive Administrator and Board of Trustees may make an exception to the provisions of this subsection when persons subject to this subsection have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subsection shall be construed to obligate the Executive Administrator and Board of Trustees to make an exception as allowed for under this subsection.

(i) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service, or an employee on leave without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by paying one hundred percent (100%) of the cost. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, s. 29(a)-(*l*); 1987, c. 738, ss. 29(n), 36(a), 36(b); c. 809, ss. 3, 4; c. 857, ss. 11(a), 11.1, 11.2, 12; 1989, c. 752, s. 22(e), (f); 1989 (Reg. Sess., 1990), c. 1074, s. 22(a); 1993, c. 321, s. 85(b); 1995, c. 278, s. 1; c. 507, ss. 7.21(a)-(c), 7.28(a)-(c); 1997-443, s. 11A.118(a); 1997-512, ss. 17, 19-27; 1999-237, s. 28.29(f); 2000-141, ss. 6(a), (b); 2000-184, ss. 1(a),(b), 3.)

Effect of Amendments. —
Session Laws 2000-141, s. 6, effective August 2, 2000, deleted the former last sentence in subdivision (a)(2), regarding future coverage as retired employees and retired members of the General Assembly; repealed subsection (a1), pertaining to permanent hourly employees; and repealed subdivision (b)(11), pertaining to retired teachers, state employees, and members of the General Assembly with less than 10 years of retirement service credit.

Session Laws 2000-184, ss. 1(a) and (b) and 3, effective August 1, 2000, also deleted the last sentence in subdivision (a)(2); repealed subsection (a1), pertaining to permanent hourly employees; repealed subdivision (b)(11), pertaining to retired teachers, State employees, and members of the General Assembly with less than 10 years of retirement service credit; and, in addition, added the last two sentences in subsection (h).

§ 135-40.5. Benefits not subject to deductible or coinsurance.

(a) Repealed by Session Laws 1985, c. 192, s. 5.

(b) Repealed by Session Laws 1991, c. 427, s. 20.

(c) Preadmission Testing. — The Plan will pay one hundred percent (100%) of reasonable and customary charges for diagnostic, laboratory and x-ray examinations performed on an outpatient basis.

(d) Second Surgical Opinions. — The Plan will pay one hundred percent (100%) of usual, reasonable and customary charges for one presurgical consultation by a second surgeon or other qualified physician as determined by the Claims Processor and Executive Administrator regarding the performance of nonemergency surgery. The Plan will also pay one hundred percent (100%) of the reasonable and customary charges for diagnostic, laboratory and x-ray examinations required by the second surgeon. Second surgical opinions for tonsillectomy and adenoidectomy procedures may be provided by Board-qualified pediatricians and family practitioners when qualified surgeons are not available to provide second surgical opinions. Should the first two opinions differ as to the necessity of surgery, the Plan will pay one hundred percent (100%) of reasonable and customary charges for the consultation of the third surgeon.

As used in this section and the provisions of G.S. 135-40.8(b), second surgical opinions, and third surgical opinions when the first two opinions differ as to the necessity of surgery, shall be required for the following procedures otherwise covered by the Plan as the primary payer of health benefits: hysterectomy, revision of the nasal structure, coronary artery bypass surgery and surgery on the knee (except in procedures involving arthroscopic surgery when the diagnosis and the surgery can be performed in the same procedure and through the same incision). Second surgical opinions for coronary bypass surgery may be provided by doctors who are Board-qualified in internal medicine when qualified surgeons are not available to provide a second surgical opinion. The Claims Processor may waive the requirement for obtaining a second surgical opinion required by this subsection or required by G.S. 135-40.8(b) if the location and availability of surgeons qualified to provide second opinions creates an unjust hardship or if the medical condition of the patient would be adversely affected.

(e) Routine Diagnostic Examinations. — The Plan will pay one hundred percent (100%) of allowable charges for routine diagnostic examinations and tests, including breast, colon, rectal, and prostate exams, X rays, mammograms, blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for covered individuals age 50 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. Routine diagnostic examinations and tests covered under this subsection also include one Pap smear per year for any covered female. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities, or to comply with governmental licensing requirements. The maximum amount payable under this subsection for a covered individual is one hundred fifty dollars ($150.00) per fiscal year.

(f) Immunizations. — The Plan will pay one hundred percent (100%) of allowable charges for immunizations for the prevention of contagious diseases as generally accepted medical practices would dictate when directed by an attending physician.

(g) Prescription Drugs. — The Plan's allowable charges for prescription legend drugs to be used outside of a hospital or skilled nursing facility are to be determined by the Plan's Executive Administrator and Board of Trustees. The Plan will pay allowable charges for each outpatient prescription drug less a copayment to be paid by each covered individual equal to the following amounts: pharmacy charges up to ten dollars ($10.00) for each generic prescription, fifteen dollars ($15.00) for each branded prescription, and twenty dollars ($20.00) for each branded prescription with a generic equivalent drug, and twenty-five dollars ($25.00) for each branded or generic prescription not on a formulary used by the Plan. Allowable charges shall not be greater than a pharmacy's usual and customary charge to the general public for a particular prescription. Prescriptions shall be for no more than a 34-day supply for the purposes of the copayments paid by each covered individual. By accepting the copayments and any remaining allowable charges provided by this subsection, pharmacies shall not balance bill an individual covered by the Plan. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though a prescription is not required. The Plan may use a pharmacy benefit manager to help manage the Plan's outpatient prescription drug coverage. In managing the Plan's outpatient prescription drug benefits, the Plan and its pharmacy benefit manager shall not provide coverage for erectile dysfunction, growth hormone, antiwrinkle, weight loss, and hair growth drugs unless such coverage is medically necessary to the health of the member. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 7; 1985, c. 192, ss. 5, 9, 12; c. 732, ss. 16-18; 1985 (Reg. Sess., 1986), c. 1020, ss. 10, 20; 1987, c. 857, s. 14; 1991, c. 427, ss. 13, 20; 1995, c. 507, s. 7.24(a); 1999-237, s. 28.28(b); 2000-141, s. 1; 2000-184, s. 2.)

Editor's Note. —

Session Laws 2000-141, s. 7, effective August 1, 2000, for fiscal year 2000-2001, directs the Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan to set allowable charges for outpatient prescription drugs at ninety percent (90%) of average wholesale price for branded prescriptions, maximum allowable charge limits for generic prescriptions covered by rules and regulations of the Health Care Financing Administration, and eighty percent (80%) of average wholesale price for generic prescriptions not covered by rules and regulations of the Health Care Financing Administration, plus a dispensing fee of four dollars ($4.00) per prescription, and to insure that any formulary used by a pharmacy benefit manager is an open formulary.

Effect of Amendments. —

Session Laws 2000-141, s. 1, effective August 2, 2000, in subsection (g), substituted "facility are to be determined by the Plan's Executive Administrator and Board of Trustees" for "ninety percent (90%) of the average wholesale price" in the first sentence, deleted the former second sentence, pertaining to a $6.00 dispensing fee, added "and twenty-five dollars ($25.00) for each ... Plan" in the present second sentence, added the third sentence, and added the last two sentences.

Session Laws 2000-184, s. 2, effective August 1, 2000, in subsection (e), deleted "Pap smears" following "examinations and tests, including" and inserted "Routine diagnostic examinations and tests covered under this subsection also include one Pap smear per year for any covered female."

§ 135-40.6A. Prior approval procedures.

(a) The Executive Administrator and Board of Trustees shall establish procedures to require prior medical approvals for the following services:

(1) Home Health Care Agency Services in accordance with G.S. 135-40.6(8)c.
(2) Repealed by Session Laws 1991, c. 427, s. 31.
(3) Ambulance Transport over 50 miles in accordance with G.S. 135-40.6(8)d.
(4) Oral Surgery in accordance with G.S. 135-40.6(5)c.
(5) Durable Medical Equipment (rental and purchase) in accordance with G.S. 135-40.6(8)e.
(6) Covered Transplants in accordance with G.S. 135-40.6(5)a.
(7) Repealed by Session Laws 1997-512, s. 38(b).
(8) Hospice Services in accordance with G.S. 135-40.6(8)q.

(9) Phase II clinical trials in accordance with G.S. 135-40.1(1b). Decisions pursuant to this section must be rendered by the Plan within 30 days after receipt of all medical documentation requested by the Plan.

(b) The Executive Administrator and Board of Trustees may establish procedures to require prior medical approvals for the following services:

(1) Skilled Nursing Facility Care (after the initial 30 days);
(2) Private Duty Nursing;
(3) Speech Therapy (unless rendered in an inpatient hospital);
(4) Physical Therapy (in the home);
(5), (6) Repealed by Session Laws 1997-512, s. 39.
(7) Surgical Procedures:
  a. Blepharoplasties
  b. Surgery for Hermaphroditism
  c. Excision of Keloids
  d. Reduction Mammoplasty
  e. Morbid Obesity Surgery
  f. Penile Prosthesis
  g. Excision of Gynecomastia
  h. Cochlear Implants
  i. Revision of the Nasal Structure
  j. Abdominoplasty
  k. Fimbrioplasty
  l. Tubotubal Anastomasis.
(8) Subcutaneous injection of "filling" material (Example: zyderm, silicone); and
(9) Suction Lipectomy.
(10) Outpatient prescription drugs requiring prospective review under the Plan's pharmacy benefit management program.

(c) No procedure for prior approval may be established except as provided by this Article as it may be amended from time to time. (1985 (Reg. Sess., 1986), c. 1020, s. 22; 1987, c. 857, s. 19; 1989, c. 770, s. 33; 1991, c. 427, ss. 31, 39; 1997-512, ss. 6, 38(b), 39; 1998-212, s. 28.29(d); 2000-141, s. 4.)

Effect of Amendments. — Session Laws 2000-141, s. 4, effective August 2, 2000, added subdivision (b)(10).

§ 135-40.7. General limitations and exclusions.

The following shall in no event be considered covered expenses nor will benefits described in G.S. 135-40.5 through G.S. 135-40.11 be payable for:

(1) Charges for any services rendered to a person prior to the date coverage under this Plan becomes effective with respect to such person.
(2) Charges for care in a nursing home, adult care home, convalescent home, or in any other facility or location for custodial or for rest cures.
(3) Charges to the extent paid, or which the individual is entitled to have paid, or to obtain without cost, in accordance with any government laws or regulations except Medicare. If a charge is made to any such person which he or she is legally required to pay, any benefits under this Plan will be computed in accordance with its provisions, taking into account only such charge. "Any government" includes the federal, State, provincial or local government, or any political subdivision thereof, of the United States, Canada or any other country.
(4) Charges for services rendered in connection with any occupational injury or disease arising out of and in the course of employment with any employer, if (i) the employer furnishes, pays for or provides

reimbursement for such charges, or (ii) the employer makes a settlement payment for such charges, or (iii) the person incurring such charges waives or fails to assert his or her rights respecting such charges.

(5) Charges for any care, treatment, services or supplies other than those which are certified by a physician who is attending the individual as being required for the medically necessary treatment of the injury or disease and are deemed medically necessary and appropriate for the treatment of the injury or disease by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor. This subdivision shall not be construed, however, to require certification by an attending physician for a service provided by an advanced practice registered nurse acting within the nurse's lawful scope of practice, subject to the limitations of G.S. 135-40.6(10).

(6) Charges for any services rendered as a result of injury or sickness due to an act of war, declared or undeclared, which act shall have occurred after the effective date of a person's coverage under the Plan.

(7) Charges for personal services such as barber services, guest meals, radio and TV rentals, etc.

(8) Charges for any services with respect to which there is no legal obligation to pay. For the purposes of this item, any charge which exceeds the charge that would have been made if a person were not covered under this Plan shall, to the extent of such excess, be treated as a charge for which there is no legal obligation to pay; and any charge made by any person for anything which is normally or customarily furnished by such person without payment from the recipient or user thereof shall also be treated as a charge for which there is no legal obligation to pay.

(9) Charges during a continuous hospital confinement which commenced prior to the effective date of the person's coverage under this Plan.

(10) Charges in excess of either the usual, customary and reasonable charge for or the fair and reasonable value of the services or supply which gives rise to the expense; provided that in each instance the extent that a particular charge is usual, customary and reasonable or fair and reasonable shall be measured and determined by comparing the charge with charges made for similar things to individuals of similar age, sex, income and medical condition in the locality concerned, and the result of such determination shall constitute the maximum allowable as covered medical expenses unless the Claims Processor finds that considerations of fairness and equity in a particular set of circumstances require that greater or lesser charges be considered as covered medical expenses in that set of circumstances.

(11) Charges for or in connection with any dental work or dental treatment except to the extent that such work or treatment is specifically provided for under the Plan. Excluded is payment for surgical benefits for tooth replacement, such as crowns, bridges or dentures; orthodontic care; filling of teeth; extraction of teeth (whether or not impacted); root canal therapy; removal of root tips from teeth; treatment for tooth decay, inflammation of gingiva, or surgical procedures on diseased gingiva or other periodontal surgery; repositioning soft tissue, reshaping bone, and removal of bony projections from the ridges preparatory to fitting of dentures; removal of cysts incidental to removal of root tips from teeth and extraction of teeth; or other dental procedures involving teeth and their bones or tissue supporting structure.

(12) Charges incurred for any medical observations or diagnostic study when no disease or injury is revealed, unless proof satisfactory to the Claims Processor is furnished that (i) the claim is in order in all other

respects, (ii) the covered individual had a definite symptomatic condition of disease or injury other than hypochondria, and (iii) the medical observation and diagnostic studies concerned were not undertaken as a matter of routine physical examination or health checkup as provided in G.S. 135-40.6(8)s.

(13) Charges for eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons) and hearing aids or examinations for the prescription or fitting thereof.

(14) Charges for cosmetic surgery or treatment except that charges for cosmetic surgery or treatment required for correction of damage caused by accidental injury sustained by the covered individual while coverage under this plan is in force on his or her account or to correct congenital deformities or anomalies shall not be excluded if they otherwise qualify as covered medical expenses.

(15) Admissions for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis and inpatient services or supplies which are not consistent with the diagnosis, for which admitted.

(16) Costs denied by the Claims Processor as part of its overall program of claim review and cost containment.

(16a) Charges in excess of negotiated rates allowed for preferred providers of institutional and professional medical care and services in accordance with the provisions of G.S. 135-40.4, when such preferred providers are reasonably available to provide institutional and professional medical care.

(17) If a covered service becomes excluded from coverage under the Plan, the Executive Administrator and Claims Processor may, in the event of exceptional situations creating undue hardships or adverse medical conditions, allow persons enrolled in the Plan to remain covered by the Plan's previous coverage for up to three months after the effective date of the change in coverage, provided the persons so enrolled had been undergoing a continuous plan of specific treatment initiated within three months prior to the effective date of the change in coverage.

(18) Charges for services unless a claim is filed within 18 months from the date of service.

(19) Any service, treatment, facility, equipment, drug, supply, or procedure that is experimental or investigational as defined in G.S. 135-40.1(7a). Clinical trial phases III and IV are covered by the Plan as is clinical trial phase II when approved by the Plan.

(20) Complications arising from noncovered services known at the time the noncovered services were provided.

(21) Charges related to a noncovered service, even if the charges would have been covered if rendered in connection with a covered service.

(22) Charges for services covered by the long-term care benefit provisions of Part 4 of this Article.

(23) Charges disallowed by the Plan's pharmacy benefits manager. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 15, 21.4; 1985 (Reg. Sess., 1986), c. 1020, ss. 16, 20, 21, 25, 26; 1987, c. 282, s. 35; 1991, c. 427, ss. 16, 30, 40; 1993, c. 464, s. 7; 1995, c. 535, s. 29; 1997-456, s. 55.9; 1997-468, s. 6; 1997-512, ss. 4, 13; 1998-212, s. 28.29(c); 2000-141, s. 5.)

Effect of Amendments. —

Session Laws 2000-141, s. 5, effective August 2, 2000, added subdivision (23).

§ 135-40.11. Cessation of coverage.

(a) Coverage under this Plan of an employee and his or her surviving spouse or eligible dependent children or of a retired employee and his or her surviving spouse or eligible dependent children shall cease on the earliest of the following dates:

(1) The last day of the month in which an employee or retired employee dies. Provided such surviving spouse or eligible dependent children were covered under the Plan at the time of death of the former employee or retired employee, or were covered on September 30, 1986, any such surviving spouse or eligible dependent children may then elect to continue coverage under the Plan by submitting written application to the Claims Processor and by paying the cost for such coverage when due at the applicable fees. Such coverage shall cease on the last day of the month in which such surviving spouse or eligible dependent children die, except as provided by this Article.

(2) The last day of the month in which an employee's employment with the State is terminated as provided in subsection (c) of this section.

(3) The last day of the month in which a divorce becomes final.

(4) The last day of the month in which an employee or retired employee requests cancellation of coverage.

(5) The last day of the month in which a covered individual enters active military service.

(6) The last day of the month in which a covered individual is found to have knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan. The Executive Administrator and Board of Trustees may make an exception to the provisions of this subdivision when persons subject to this subdivision have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subdivision shall be construed to obligate the Executive Administrator and Board of Trustees to make an exception as allowed for under this subdivision.

(7) The last day of the month in which an employee who is Medicare-eligible selects Medicare to be the primary payer of medical benefits. Coverage for a Medicare-eligible spouse of an employee shall also cease the last day of the month in which Medicare is selected to be the primary payer of medical benefits for the Medicare-eligible spouse. Such members are eligible to apply for conversion coverage.

(b) Coverage under this Plan as a dependent child ceases when the child ceases to be a dependent child as defined by G.S. 135-40.1(3) except, coverage may continue under this Plan for a period of not more than 36 months after loss of dependent status on a fully contributory basis provided the dependent child was covered under the Plan at the time of loss of dependent status.

(b1) Coverage under the Plan as a surviving dependent child whether covered as a dependent of a surviving spouse, or as an individual member (no living parent), ceases when the child ceases to be a dependent child as defined by G.S. 135-40.1(3), except coverage may continue under the Plan on a fully contributory basis for a period of not more than 36 months after loss of dependent status.

(c) Termination of employment shall mean termination for any reason, including layoff and leave of absence, except as provided in (a)(1) and (2) of this section, but shall not, for purposes of this Plan, include retirement upon which the employee is granted an immediate service or disability pension under and pursuant to a State-supported Retirement System.

(1) In the event of termination for any reason other than death, coverage under the Plan for an employee and his or her eligible spouse or dependent children, provided the eligible spouse or dependent children were covered under the Plan at termination of employment may be continued for a period of not more than 18 months following termination of employment on a fully contributory basis. Employees who were covered under the Plan at termination of employment may be continued for a period of not more than 18 months or 29 months if determined to be disabled under the Social Security Act, Title II, OASDI or Title XVI, SSI.

(2) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(r).

(3) In the event of approved leave of absence without pay, other than for active duty in the armed forces of the United States, coverage under this Plan for an employee and his or her dependents may be continued during the period of such leave of absence by the employee's paying one hundred percent (100%) of the cost.

(4) If employment is terminated in the second half of a calendar month and the covered individual has made the required contribution for any coverage in the following month, that coverage will be continued to the end of the calendar month following the month in which employment was terminated.

(5) Employees paid for less than 12 months in a year, who are terminated at the end of the work year and who have made contributions for the non-work months, will continue to be covered to the end of the period for which they have made contributions, with the understanding that if they are not employed by another State-covered employer under this Plan at the beginning of the next work year, the employee will refund to the ex-employer the amount of the employer's cost paid for them during the non-paycheck months.

(6) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service, or an employee on leave of absence without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by the employee's paying one hundred percent (100%) of the cost.

(d) No benefits will be paid by this Plan for any expenses incurred or treatment received after cessation of coverage as provided in subsections (a) or (b) of this section, except that in the event of hospital confinement at that time, hospitalization benefits as described in G.S. 135-40.6 will continue to the extent provided therein.

(e) A legally divorced spouse and any eligible dependent children of a covered employee or retired employee may continue coverage under this Plan for a period of not more than 36 months following the first of the month after a divorce becomes final on a fully contributory basis, provided the former spouse and any eligible dependent children were covered under the Plan at the time a divorce became final.

(f) A legally separated spouse of a covered employee or retired employee may continue coverage under this Plan for a period not to exceed 36 months from the separation date on a fully contributory basis, provided the separated spouse was covered under the Plan at the time of separation and provided the covered employee's or retired employee's actions result in the loss of coverage for the separated spouse. Eligible dependent children may also continue coverage if covered under the Plan at time of separation, provided the employee's or retired employee's actions result in the loss of coverage for the dependent children.

(g) Whenever this section gives a right to continuation coverage, such coverage must be elected no later than a date set by the Executive Administrator and Board of Trustees.

(h) Continuation coverage under this Plan shall not be continued past the occurrence of any one of the following events:

(1) The termination of the Plan.
(2) Failure of a Plan member to pay monthly in advance any required premiums.
(3) A person becomes a covered employee or a dependent of a covered employee under any group health plan and that group health plan has no restrictions or limitations on benefits.
(4) A person becomes eligible for Medicare benefits on or after the effective date of the continuation coverage.
(5) The person was determined to be no longer disabled, provided the 18-month coverage was extended to 29 months due to having been determined to be disabled under the Social Security Act, Title II, OASDI or Title XVI, SSI.
(6) The person reaches the maximum applicable continuation period of 18, 29, or 36 months.

(i) Notice requirements concerning continuation coverage shall be developed by the Executive Administrator and Board of Trustees.

(j) The spouse and any eligible dependent children of a covered employee may continue coverage under the Plan on a fully contributory basis for a period not to exceed 36 months from the date the employee becomes eligible for Medicare benefits which results in a loss of coverage under the Plan, provided that the spouse and eligible dependent children were covered under the Plan at the time the employee became eligible for Medicare benefits which results in a loss of coverage under the Plan. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 17, 19-21; 1985, c. 732, ss. 13, 34; 1985 (Reg. Sess., 1986), c. 1020, ss. 19, 29(m)-(x); 1987, c. 738, s. 29(o); 1989, c. 752, s. 22(p); 1991, c. 427, s. 42; 1995, c. 278, s. 2; 1997-512, ss. 32-35; 2000-184, s. 4.)

Effect of Amendments. — Session Laws 2000-184, s. 4, effective August 1, 2000, added the last two sentences in subdivision (a)(6).

ARTICLE 4.

Consolidated Judicial Retirement Act.

§ 135-52. Application of Article 1; administration.

CASE NOTES

Quoted in Wells v. Consolidated Judicial Retirement Sys., — N.C. App. —, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000).

§ 135-57. Service retirement.

CASE NOTES

Stated in Wells v. Consolidated Judicial Retirement Sys., — N.C. App. —, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000).

§ 135-65. Post-retirement increases in allowances.

(a) Commencing with the post-retirement adjustment, effective July 1, 1974, all retirement allowances payable under the provisions of this Article shall be adjusted annually in accordance with the provisions of G.S. 135-5(o).

(b) Increases in Benefits Paid to Members Retired prior to July 1, 1978. — Notwithstanding subsection (a) of this section, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in subsection (a) of this section, shall be the current maximum four percent (4%) plus an additional one percent (1%) to a total of five percent (5%) for the year 1979 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(c) Increases in Benefits Paid to Members Retired prior to July 1, 1979. — 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, shall be the current maximum four percent (4%) plus an additional six percent (6%) to a total of ten percent (10%) for the year 1980-81 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(d) Increases in Benefits Paid to Members Retired Prior to July 1, 1982. — From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by four percent (4%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (a) of this section.

(e) Increase in Benefits Paid to Members Retired on or before July 1, 1983. — From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by eight percent (8%) of the allowance payable on July 1, 1983.

(f) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984. Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(g) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985. Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985 and June 30, 1986.

(h) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986. Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(i) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987. Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(j) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988. Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(k) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(*l*) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989. Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(m) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(n) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(o) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(p) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(q) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four- tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(r) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(s) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(t) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(u) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by two and six-tenths percent (2.6%) of the allowance payable on

June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of two and six-tenths percent (2.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000. (1973, c. 640, s. 1; 1979, c. 838, s. 104; 1979, 2nd Sess., c. 1137, s. 69; 1983, c. 761, s. 221; 1983 (Reg. Sess., 1984), c. 1034, s. 224; 1985, c. 479, s. 189(b); 1985 (Reg. Sess., 1986), c. 1014, s. 49(b); 1987, c. 738, s. 27(b); 1987 (Reg. Sess., 1988), c. 1086, s. 22(b); 1989, c. 752, s. 41(b); 1989 (Reg. Sess., 1990), c. 1077, ss. 8, 9; 1991 (Reg. Sess., 1992), c. 900, s. 53(c); 1993, c. 321, s. 74(f); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(n); 1995, c. 507, s. 7.22(b); 1996, 2nd Ex. Sess., c. 18, s. 28.21(b); 1997-443, s. 33.22(e); 1998-153, s. 21(b); 1999-237, s. 28.23(b); 2000-67, s. 26.20(e).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 26.20(e), effective July 1, 2000, added subsection (u).

Chapter 136.

Roads and Highways.

Article 1.

Organization of Department of Transportation.

§ 136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.

Cross References. — As to periodic adjustment of permit fees to assure that revenue generated by the fees equals the cost of administration of Oversize/Overweight Permit Unit Program, see § 20-119(e).

§ 136-16.6. Continuing rail appropriations.

Cross References. — See § 124-5.1(a), directing the application of dividends of the North Carolina Railroad Company received by the State to reduce obligations described in Session Laws 1997-443, s. 32.30(c), as amended by Session Laws 1999-237, s. 27.11(d). See also § 124-5.1(b), regarding the cessation of accrual of interest on the remaining balance of obligations described in Session Laws 1997-443, s. 32.30(c), as amended by Session Laws 1999-237, s. 27.11(d), effective January 1, 2000.

Editor's Note. —

Session Laws 1999-237, s. 27.25(a)-(*l*), established the Future of the North Carolina Railroad Study Commission. Session Laws 2000-138, s. 8.3, amended Session Laws 1999-237, s. 27.25(k), to make the Commission permanent. Session Laws 1999-237, s. 27.25(a)-(k), has been codified as Chapter 120, Article 28, G.S. 120-245 to 120-255, at the direction of the Revisor of Statutes.

Article 2.

Powers and Duties of Department and Board of Transportation.

§ 136-17.2A. Distribution formula for funds expended on Intrastate System and Transportation Improvement Program.

(a) Funds expended for the Intrastate System projects listed in G.S. 136-179 and both State and federal-aid funds expended under the Transportation Improvement Program, other than federal congestion mitigation and air quality improvement program funds appropriated to the State by the United States pursuant to 23 U.S.C. § 104(b)(2) and 23 U.S.C. § 149, funds expended on an urban loop project listed in G.S. 136-180 and funds received through competitive awards or discretionary grants through federal appropriations either for local governments, transportation authorities, transit authorities, or the Department, shall be distributed throughout the State in accordance with this section.

(1) Distribution Region A consists of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Johnston, Martin, Nash, Northampton, Pasquotank, Perquimans, Tyrrell, Washington, Wayne, and Wilson.

(2) Distribution Region B consists of the following counties: Beaufort, Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt, and Sampson.

(3) Distribution Region C consists of the following counties: Bladen, Columbus, Cumberland, Durham, Franklin, Granville, Harnett, Person, Robeson, Vance, Wake, and Warren.

(4) Distribution Region D consists of the following counties: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Orange, Rockingham, Rowan, and Stokes.

(5) Distribution Region E consists of the following counties: Anson, Cabarrus, Chatham, Hoke, Lee, Mecklenburg, Montgomery, Moore, Randolph, Richmond, Scotland, Stanly, and Union.

(6) Distribution Region F consists of the following counties: Alexander, Alleghany, Ashe, Avery, Caldwell, Catawba, Cleveland, Gaston, Iredell, Lincoln, Surry, Watauga, Wilkes, and Yadkin.

(7) Distribution Region G consists of the following counties: Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey.

(b) Until ninety percent (90%) of the mileage of the Intrastate System projects listed in G.S. 136-179 is completed, the Secretary of Transportation shall, on or before October 1 of each year, calculate the estimated amount of funds subject to this section that will be available for the next seven program years beginning that October 1. The Secretary shall then calculate a tentative percentage share for each distribution region by multiplying the total estimated amount by a factor that is based:

(1) Twenty-five percent (25%) on the estimated number of miles to complete the Intrastate System projects in that distribution region compared to the estimated number of miles to complete the total Intrastate System;

(2) Fifty percent (50%) on the estimated population of the distribution region compared to the total estimated population of the State; and

(3) Twenty-five percent (25%) on the fraction one-seventh, which provides an equal share based on the number of distribution regions.

(c) When ninety percent (90%) of the mileage of the Intrastate System projects listed in G.S. 136-179 is completed, the Secretary of Transportation shall, on or before October 1 of each year, calculate the estimated amount of funds subject to this section that will be available for the next seven program years beginning that October 1. The Secretary shall then calculate a tentative percentage share for each distribution region by multiplying the total estimated amount by a factor that is based:

(1) Sixty-six percent (66%) on the estimated population of the distribution region compared to the total estimated population of the State; and

(2) Thirty-four percent (34%) on the fraction one-seventh, which provides an equal share based on the number of distribution regions.

(d) In each fiscal year, the Department shall, as nearly as practicable, expend in a distribution region an amount equal to that region's tentative percentage share of the funds that are subject to this section and are available for that fiscal year. In any consecutive seven-year period, the amount expended in a distribution region must be between ninety percent (90%) and one hundred ten percent (110%) of the sum of the amounts established under this subsection as the target amounts to be expended in the region for those seven years.

(e) In making the calculation under this section, the Secretary shall use the most recent estimates of population certified by the State Budget Officer.

(f) In developing the schedules of improvements to be funded from the Trust Fund and of improvements to be made under the Transportation Improvement Program, the Board of Transportation shall consider the highway needs of every county in a distribution region and shall make every reasonable effort to schedule the construction of highway improvements in a manner that addresses the needs of every county in the region in an equitable and timely manner.

(g) On or before December 1, 1999, the Secretary shall submit to the General Assembly a report of allocations, obligations, and actual yearly expenditures for each distribution region, covering fiscal years 1989-90 through 1997-98. On or before December 1, 2000, and every two years thereafter, the Secretary shall submit to the General Assembly a report of allocations and actual expenditures for the preceding two fiscal years. At any time in which the report indicates that allocations and expenditures by distribution region do not comply with the provisions of subsection (d) of this section, the Secretary shall also submit a plan to correct the imbalance.

(h) Each year, the Secretary shall calculate the amount of funds allocated in that year to each division, the amount of funds obligated, and the amount the obligations exceeded or were below the allocation. The target amounts obtained according to subsection (b) of this section shall be adjusted to account for any differences between allocations and obligations reported for the previous year. The new target amounts shall be used to fulfill the requirements of subsection (d) of this section for the next update of the Transportation Improvement Program. The adjustment to the target amount shall be allocated by division. (1989, c. 692, s. 1.4; c. 770, s. 74.7; 1999-237, ss. 27.19, 27.20(a); 1999-422, s. 2; 2000-134, s. 22.)

Effect of Amendments. — Session Laws 2000-134, s. 22, effective July 1, 2000, inserted "federal congestion mitigation and air quality improvement program funds appropriated to the State by the United States pursuant to 23 U.S.C. § 104(b)(2) and 23 U.S.C. § 149" in subsection (a).

§ 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, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, 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 and adjacent utility rights-of-way: 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 Class 1 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. None of the 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 except (i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant

to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 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, electric and other lines, above or below ground, 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 way 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, electric or other lines, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), 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 Class 1 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 Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and programs the Department is authorized to administer. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the

roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000).

(12a) The Department of Transportation shall have such powers as are necessary to establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation is authorized to apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the above federal aid acts. Such loans or other financial assistance shall be subject to repayment and conditioned upon the establishment of such security and the payment of such fees and interest rates as the Department of Transportation may deem necessary. The Department of Transportation is authorized to apply a municipality's share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Transportation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The infrastructure banking program authorized under this subdivision shall not modify the regional distribution formula for the distribution of funds established by G.S. 136-17.2A. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants shall pledge as security for such obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of such governmental units shall not be pledged or be deemed to have been pledged unless the requirements of

Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision shall be outstanding debt for the purpose of Article 10, Chapter 159 of the General Statutes.

(13) The Department of Transportation may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville 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 and recreational uses by establishing connections between the highway system and the navigable and nonnavigable waters of the State by means of connecting roads and piers. Such facilities for recreational purposes shall be funded from funds available for safety or enhancement purposes.

(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 Class 1 misdemeanor; 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.

(27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those

incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.

(28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

(30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set forth in Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).

(31) The Department of Transportation is authorized to designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that:

a. Have no scenic value,

b. Have been designated or would be so designated solely to preserve system continuity, and

c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subsection.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subsection but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subsection, if requested.

(32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable.

(33) The Department of Transportation is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the railroad company and require the company to repair the equipment or facilities.

(34) The Department of Transportation may conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all railroads and may investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident.

(35) To establish rural planning organizations, as provided in Article 17 of this Chapter. (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, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2; 1995 (Reg. Sess., 1996), c. 673, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 19.10(a); 1997-428, s. 1; 1997-443, s. 11A.118(a); 2000-123, s. 1; 2000-140, s. 102.)

Editor's Note. —
Session Laws 2000-123, s. 3, provides that nothing in the act shall require the General Assembly to appropriate funds to implement it and further provides that neither the Department of Transportation nor the General Assembly shall reallocate any road maintenance funds to implement it.

Session Laws 2000-123, s. 4, directs the Department to report to the Joint Legislative Transportation Oversight Committee on the implementation of the act on or before December 1, 2000.

Effect of Amendments. — Session Laws 2000-123, s. 1, effective July 1, 2000, added subdivision (35).

Session Laws 2000-140, s. 102, effective July 21, 2000, in subdivision (15), inserted "and recreational uses," inserted "and nonnavigable," and added the last sentence.

CASE NOTES

I. GENERAL CONSIDERATION.

Stated in DOT v. Rowe, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 615 (June 20, 2000).

§ 136-19.4. Registration of right-of-way plans.

(a) A copy of the cover sheet and plan and profile sheets of the final right-of-way plans for all Department of Transportation projects, on those projects for which plans are prepared, under which right-of-way or other interest in real property is acquired or access is controlled shall be certified by the Department of Transportation to the register of deeds of the county or counties within which the project is located. The Department shall certify said plan sheets to the register of deeds within two weeks from their formal approval by the Board of Transportation.

(b) The copy of the plans certified to the register of deeds shall consist of a Xerox, photographic, or other permanent copy, except for plans electronically transmitted pursuant to subsection (b1) of this section, and shall measure approximately 17 inches by 11 inches including no less than one and one-half inches binding space on the left-hand side.

(b1) With the approval of the county in which the right-of-way plans are to be filed, the Department may transmit the plans electronically.

(c) Notwithstanding any other provision in the law, upon receipt of said original certified copy of the right-of-way plans, the register of deeds shall record said right-of-way plans and place the same in a book maintained for that purpose, and the register of deeds shall maintain a cross-index to said right-of-way plans by number of road affected, if any, and by identification number. No probate before the clerk of the superior court shall be required.

(d) If after the approval of said final right-of-way plans the Board of Transportation shall by resolution alter or amend said right-of-way or control of access, the Department of Transportation, within two weeks from the adoption by the Board of Transportation of said alteration or amendment, shall certify to the register of deeds in the county or counties within which the project is located a copy of the amended plan and profile sheets approved by the Board of Transportation and the register of deeds shall remove the original plan sheets and record the amended plan sheets in lieu thereof.

(e) The register of deeds in each county shall collect a fee from the Department of Transportation of twenty-one dollars ($21.00) for the first page and five dollars ($5.00) for each additional page for each original or amended plan and profile sheet recorded. (1967, c. 228, s. 1; 1969, c. 80, s. 13; 1973, c. 507, ss. 5, 12-15; 1975, c. 716, s. 7; 1977, c. 464, s. 7.1; 1999-422, s. 1; 2000-68, s. 1.)

Effect of Amendments. —
Session Laws 2000-68, s. 1, effective January 1, 2001, in subsection (e), inserted “twenty-one dollars ($21.00) for the first page and” and “for each additional page.”

§ 136-25. Repair of road detour.

CASE NOTES

Applied in Davis v. J.M.X., Inc., — N.C. App. —, 528 S.E.2d 56, 2000 N.C. App. LEXIS 309 (2000).

§ 136-30. Uniform signs and other traffic control devices on highways, streets, and public vehicular areas.

CASE NOTES

Stated in Davis v. J.M.X., Inc., — N.C. App. —, 528 S.E.2d 56, 2000 N.C. App. LEXIS 309 (2000).

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(a) There is 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-fourths cents (13/4¢) tax on each gallon of motor fuel taxed under Article 36C of Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter. The amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

Seventy-five percent (75%) of the funds appropriated for cities and towns 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 State 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 under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 of each year. 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.

The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section 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 this section 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, as defined by G.S. 160B-2(1), 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 Health and Human Services is acceptable. Funds allocated to the area for this purpose shall be administered by the Butner Town Manager. (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; 1985 (Reg. Sess., 1986), c. 982, s. 1; 1989, c. 692, s. 1.6; 1995, c. 390, s. 26; c. 461, s. 18; 1997-443, s. 11A.118(a); 2000-165, s. 1.)

Effect of Amendments. — Session Laws 2000-165, s. 1, effective July 1, 2000, and applicable to allocations authorized under G.S. 136-41.1 that occur on or after the effective date, substituted "Butner Town Manager" for "member of the State Board of Transportation administering the Highway Fund in Granville County" in subsection (c).

§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.

Editor's Note. —

Session Laws 1993, c. 321, s. 169.1, as amended by Session Laws 2000-165, s. 1.1, provides:

"Notwithstanding any other provision of law, the Department of Transportation shall maintain the streets and highways on the State highway system within municipalities that are not eligible for funds under G.S. 136-41.2. The Department of Transportation shall maintain the streets and highways as part of the State secondary system, and maintain the paving priority for the secondary roads the same as if the municipality were not incorporated, as long as the ineligibility for funds under G.S. 136-41.2 continues. The provisions of this section apply only to municipalities incorporated between July 1, 1989, and June 30, 1993 or between June 1, 1978 and June 30, 1978."

Article 2B.

Public Transportation.

§ 136-44.20. Department of Transportation designated agency to administer and fund public transportation programs; authority of political subdivisions.

(a) The Department of Transportation is hereby designated as the agency of the State of North Carolina responsible for administering all federal and/or State programs relating to public transportation; and the Department is hereby granted authority to do all things required under applicable federal and/or State legislation to administer properly public transportation programs within North Carolina. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute federal and State financial assistance for inter-city rail or bus passenger service crossing one or more county lines.

(b) The Department of Transportation, upon approval by the Board of Transportation, is authorized to provide the matching share of federal public transportation assistance programs through private resources, local government funds, or State appropriations provided by the General Assembly.

(b1) The Secretary may, subject to the appropriations made by the General Assembly for any fiscal year, enter into State Full Funding Grant Agreements with a Regional Public Transportation Authority (RPTA) duly created and existing pursuant to Article 26 of Chapter 160A, a Regional Transportation Authority (RTA) duly created and existing pursuant to Article 27 of Chapter 160A, or a city organized under the laws of this State as defined in G.S. 160A-1(2), to provide State matching funds for "new start" fixed guideway projects in development by any entity pursuant to 49 U.S.C. § 5309. These grant agreements shall be executable only upon an Authority's or city's completion of and the Federal Transit Administration (FTA) approval of Preliminary Engineering and Environmental Impact Studies in anticipation of federal funding pursuant to 49 U.S.C. § 5309.

Prior to executing State Full Funding Grant Agreements, the Secretary shall submit proposed grant agreements or amendments to the Joint Legislative Transportation Oversight Committee for review. The agreements, consistent with federal guidance, shall define the limits of the "new starts" projects within the State, commit maximum levels of State financial participation, and establish terms and conditions of State financial participation.

State Full Funding Grant Agreements may provide for contribution of State funds in multiyear allotments. The multiyear allotments shall be based upon the Department's estimates, made in conjunction with an Authority or city, of the grant amount required for "new start" project work to be performed in the appropriation fiscal year.

(c) Nothing herein shall be construed to prevent a political subdivision of the State of North Carolina from applying for and receiving direct assistance from the United States government under the provisions of any applicable legislation.

(d) Of the amount appropriated to the Department each year for State construction under the Transportation Improvement Program, the Department may use up to five million dollars ($5,000,000) to develop economical transit alternatives to highway construction. These alternatives may include high occupancy vehicle lanes and rail routes and providing the matching share of federal grants for transit alternatives to highway construction. (1975, c. 451;

1977, c. 341, s. 2; 1983, c. 616; 1989, c. 692, s. 2.3; c. 700, s. 1; 1993, c. 488, s. 2; 2000-67, s. 25.7.)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 25.7, effective July 1, 2000, added subsection (b1).

Article 3A.

Streets and Highways in and around Municipalities.

§ 136-66.3. Municipal participation in improvements to the State highway system.

(a) Municipal Participation Authorized. — A municipality may, but is not required to, participate in the right-of-way and construction cost of a State highway improvement approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in the municipality or its extraterritorial jurisdiction.

(b) Process for Initiating Participation. — A municipality interested in participating in the funding of a State highway improvement project may submit a proposal to the Department of Transportation. The Department and the municipality shall include their respective responsibilities for a proposed municipal participation project in any agreement reached concerning participation.

(c) Type of Participation Authorized. — A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that purpose. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation.

(c1) No TIP Disadvantage for Participation. — If a municipality participates in a State highway system improvement project, as authorized by this section, the Department shall ensure that the municipality's participation does not cause any disadvantage to any other project in the Transportation Improvement Program under G.S. 143B-350(f)(4) and located outside the municipality.

(c2) Distribution of State Funds Made Available by Municipal Participation. — Any State or federal funds allocated to a project that are made available by municipal participation in a project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.

(c3) Limitation on Agreements. — The Department shall not enter into any agreement with a municipality to provide additional total funding for highway construction in the municipality in exchange for municipal participation in any project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) Authorization to Participate in Development-Related Improvements. — When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) Authorization to Participate in Project Additions. — Pursuant to an agreement with the Department of Transportation, a municipality may reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a street or highway improvement projects approved by the Board of Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements that the Department of Transportation would normally include in the project.

(e1) Reimbursement Procedure. — Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs necessary for the project. The Department of Transportation shall not charge a municipality any interest during the initial three years.

(f) Report to General Assembly. — The Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) Municipal Acquisition of Rights-of-Way. — In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or municipal governing body, and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) Department Authority Concerning Rights-of-Way. — In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Changes to Municipal Participation Agreement. — Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Municipality Party to Rights-of-Way Proceeding. — Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any

State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way.

(k) Specified County Participation. — In addition to the authority given to Burke, Cabarrus, and Mecklenburg Counties by Chapter 478 of the 1993 Session Laws, these counties are authorized to participate in State highway improvement projects located anywhere in each respective county in accordance with this section. (1959, c. 687, s. 3; 1965, c. 867; 1967, c. 1127; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1987, c. 747, s. 3; 1989, c. 595, ss. 2, 3; 1991, c. 21, s. 1; 2000-188, s. 1.)

Effect of Amendments. — Session Laws 2000-188, s. 1, effective July 1, 2000, rewrote the section.

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.

CASE NOTES

II. Practice and Procedure.

II. PRACTICE AND PROCEDURE.

Cartway's Effect on Prescriptive Easement. — Where the establishment of a cartway by petitioners' predecessor in title interrupted continuity of use, the petitioners failed to present evidence of the existence of a prescriptive easement and to make out a prima facie case that the road to their house, which the respondents had threatened to block off, was a public road. Roten v. Critcher, 135 N.C. App. 469, 521 S.E.2d 140 (1999).

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

CASE NOTES

When Appeal May Not Be Taken. — Where the Clerk of Court had not entered any order either confirming, amending or rejecting the report of the jury of view dated June 19, 1997, no "final order or judgment" had been entered pursuant to which an appeal might lie under this section and the trial court should have dismissed appeal as premature. Jones v. Winckelmann, 134 N.C. App. 143, 516 S.E.2d 876 (1999).

§ 136-69. Cartways, tramways, etc., laid out; procedure.

CASE NOTES

Cited in Jones v. Winckelmann, 134 N.C. App. 143, 516 S.E.2d 876 (1999).

Article 6G.

Private Pilot Toll Project.

§ 136-89.171. Legislative findings.

It is hereby declared that the existing State road system is becoming increasingly congested and overburdened with traffic in many areas of the State; that the sharp surge of vehicle miles traveled is overwhelming the State's ability to build and pay for adequate road improvements; and that an adequate answer to this challenge will require the State to be innovative and utilize several new approaches to transportation improvements in North Carolina. It is the purpose of this Article to authorize the construction of no more than two private toll road projects as pilots. In doing this, the Department of Transportation is directed to focus on using toll roads to alleviate commuter traffic congestion. It is the intent that there be no toll on existing State roads. (2000-145, s. 1.)

Editor's Note. — Session Laws 2000-145, s. 2, directs the Department to study the feasibility of construction of State-owned and State-operated toll roads and the areas where any State-owned and State-operated toll roads are proposed and report its findings to the Joint Legislative Transportation Oversight Committee and to the Joint Transportation Appropriations Subcommittee by February 1, 2001.

Session Laws 2000-145, s. 3, made this Article effective August 2, 2000.

This section was enacted as § 136-89.168 by Session Laws 2000-145, s. 1. It has been redesignated as this section at the direction of the Revisor of Statutes.

§ 136-89.172. Private Pilot Toll Project.

(a) Authority to License. — The Department of Transportation is authorized to issue a license to an applicant to finance, design, construct, maintain, improve, own, or operate solely from private resources one pilot toll transportation project within the State of North Carolina. Any license authorized by this section must be issued on or before July 1, 2003.

(b) Requirement for Finding of Need. — Prior to the issuance of any license under this section, the Department shall make a written determination that the proposed project is in the public interest.

(c) Submission of Financial Data. — A person applying for a license to construct a project under this section shall submit detailed financial data to the Department concerning the ability of applicant to finance the proposed project. The Department shall independently analyze the data submitted for each project proposal.

(d) License Period. — A license issued under this section shall not exceed 50 years from beginning of the operations of the road or bridge. A license may be renewed for an additional 50-year term at the discretion of the Department and in conformity with this Article.

(e) State Use for Other Purposes. — A license issued pursuant to this section shall reserve unto the State or its designee the authority to enter and utilize the project right-of-way for other transportation or utility-related purposes, as long as those purposes do not interfere with the use by the licensee.

(f) Terms of License. — Additional terms and conditions of any license issued pursuant to this section shall be within the discretion of the Department of Transportation, and shall include, in addition to any other requirements:

(1) Provisions establishing minimum design and construction standards for the project.

(2) Provisions establishing minimum maintenance standards for the project and the responsibility for such maintenance.
(3) Provisions requiring that appropriate traffic signs and other traffic control devices be erected and maintained on the project.
(4) Provisions establishing the rights and duties of the parties regarding infrastructure improvements and connections between the project and the State highway system.
(5) Provisions regarding any type of access control, if any, that may be required for the project.
(6) Provisions establishing the relative responsibilities of the licensee and the Department of Transportation to keep the completed project open and accessible to the public.
(7) Provisions requiring that the State of North Carolina, its agencies, officials, and employees be indemnified and held harmless by the licensee for any liability incurred on the project in connection with project construction, maintenance, or operation.
(8) Provisions concerning location of the project.

(g) Department Powers. — The Department may exercise any power possessed by it with respect to the development and construction of State transportation projects to facilitate the development and construction of transportation projects pursuant to this Article.

(h) Acquisition of Project Property. — A person licensed to construct a project under this section shall make all reasonable efforts to acquire all right-of-way interests required for the project through private negotiation. The Department is authorized to exercise its power of eminent domain to acquire property rights necessary for construction and maintenance of the project only as to those property interests that cannot be acquired by the licensee at a reasonable price through private negotiation, and only as required to control access to the project. A licensee requesting that the Department exercise its power of eminent domain shall be required to reimburse the Department in the full amount of its costs incurred in acquiring the necessary property interests for the private portion of the project, including any negotiated settlement or jury verdict, and any attorneys' fees that may be awarded. The acquisition of property interests necessary for inclusion in a project licensed under this section is hereby declared to be for a public transportation purpose.

(i) Transfer of Department Property to Licensee. — Notwithstanding the provisions of G.S. 136-19, should the Department determine that a licensed project require property interests held by the Department, such interests as the Department determines to be necessary may be conveyed to the licensee for fair market value.

(j) Applicability of Other Laws. — For the purpose of entering into contractual licensing agreements under this section, the Department of Transportation is exempted from any provision of the General Statutes that conflicts with the purposes of this section, specifically including G.S. 136-28.1 and G.S. 143-52. A project licensed under this section shall not be included in the distribution formula under G.S. 136-17.2A but shall require approval of the Board of Transportation under G.S. 143B-350(f)(4). A licensee under this section shall endeavor to comply with the provisions of G.S. 136-28.4 concerning participation by disadvantaged businesses.

(k) Applicability of Motor Vehicle Laws. — Any project licensed by the Department of Transportation under the authority granted in this section shall be considered a "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State Highway Patrol and the Division of Motor Vehicles, shall have the same powers and duties on such projects as on any other highway or public vehicular area.

(*l*) Exclusive License. — Upon the issuance of a license by the Department of Transportation, no further license of any type may be required by the State or local government body for the ownership, construction, or operation of the project.

(m) Definitions. — The following definitions apply as used in this section:

(1) "Person" means any natural person, partnership, corporation, trust, association, sole proprietorship, or any other legal entity other than the State or its agencies, institutions, or political subdivisions.

(2) "Project" means a privately constructed, maintained, and operated toll highway, road, bridge, or other transportation-related facility.

(3) "Licensee" means a person authorized through a contractual agreement with the Department of Transportation to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a project.

(n) Report. — The Department shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter, on any toll project planning, construction, or operation commenced pursuant to the provisions of this Article. (2000-145, s. 1.)

Editor's Note. — This section was enacted as § 136-89.169 by Session Laws 2000-145, s. 1. It has been redesignated as this section at the direction of the Revisor of Statutes.

Article 9.

Condemnation.

§ 136-103. Institution of action and deposit.

CASE NOTES

Failure to Use § 136-108 Mechanism. — Where landowners failed to avail themselves of the mechanism for determining issues other than damages provided in § 136-108 and, instead, specifically stipulated that only the matter of just compensation remained for resolution at trial, the landowners could not dispute the amount of property affected by the plaintiffs' taking nor the plaintiffs' listing thereof in the Declaration of Taking before the appellate court. DOT v. Tilley, — N.C. App. —, 524 S.E.2d 83, 2000 N.C. App. LEXIS 16 (2000).

Compliance Shown. — Court reviewed State filings required by this section and found that the Department of Administration properly acquired one-fifth of land held as tenant in common with corporation through the exercise of eminent domain. State v. Coastland Corp., 134 N.C. App. 269, 517 S.E.2d 655 (1999), cert. denied, 351 N.C. 111, — S.E.2d — (1999).

§ 136-104. Vesting of title and right of possession; recording memorandum or supplemental memorandum of action.

CASE NOTES

Taking Rendered Partition Suit Moot. — Taking which was proper under this section rendered earlier suit for partition of property moot; State did not have to wait until partition proceedings had been completed to condemn petitioner's interest. Coastland Corp. v. North Carolina Wildlife Resources Comm'n, 134 N.C. App. 343, 517 S.E.2d 661 (1999).

§ 136-108. Determination of issues other than damages.

CASE NOTES

Immediate Appeal. —
Although the parties to a condemnation hearing must resolve all issues other than damages at the hearing under this section, the section does not require the parties to appeal those issues before proceeding to the damages trial. Therefore, defendants were not required to immediately appeal trial court's order unifying four remaining tracts. DOT v. Rowe, 351 N.C. 172, 521 S.E.2d 707 (1999).

Nuckles holding limited. — To the extent that N.C. State Highway Comm'n v. Nuckles was expanded to other issues arising from condemnation hearings, the Supreme Court limited that holding to questions of title and area taken. DOT v. Rowe, 351 N.C. 172, 521 S.E.2d 707 (1999).

Failure to Invoke Section. — Where landowners failed to avail themselves of the mechanism for determining issues other than damages provided in this section and, instead, specifically stipulated that only the matter of just compensation remained for resolution at trial, the landowners could not dispute the amount of property affected by the plaintiffs' taking nor the plaintiffs' listing thereof in the Declaration of Taking before the appellate court. DOT v. Tilley, — N.C. App. —, 524 S.E.2d 83, 2000 N.C. App. LEXIS 16 (2000).

Cited in DOT v. Mahaffey, — N.C. App. —, 528 S.E.2d 381, 2000 N.C. App. LEXIS 426 (2000); DOT v. Rowe, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 615 (June 20, 2000).

§ 136-112. Measure of damages.

CASE NOTES

I. General Consideration.
III. Pleading and Practice.

I. GENERAL CONSIDERATION.

Constitutionality. — The provision allowing general benefits to set off the fair market value of the remaining part of a tract of land under this section violates the constitutional requirement of providing just compensation in condemnation proceedings, and the equal protection rights of property owners, because the statute allows a compensation which is unjust to the condemnee while providing a windfall to the public. The property owner is subjected to an involuntary taking of his property while also being subjected to the injustice of receiving an amount less than what he actually lost. He is being required to carry the undue burden of paying an additional cost not paid by the rest of the public. DOT v. Rowe, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 615 (June 20, 2000).

The measure of compensation in this section provides "just compensation" within the scope of both the federal and state constitutions. DOT v. Mahaffey, — N.C. App. —, 528 S.E.2d 381, 2000 N.C. App. LEXIS 426 (2000).

Special Benefits. — The provision allowing the value of special benefits to the fair market value of the remaining part of a tract of land partially condemned under this section to be set off against the amount of compensation paid does not violate the constitutional requirement of providing just compensation in condemnation proceedings. DOT v. Rowe, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 615 (June 20, 2000).

Inverse Condemnation Claim Properly Dismissed After Formal Condemnation Instituted. — The trial court correctly granted the Department of Transportation's motion to dismiss the defendants' inverse condemnation claim where DOT had already instituted a formal condemnation action prior to defendants' answer and the provisions of this section would guide the determination of the proper amount of just compensation for the DOT's taking from the property. DOT v. Mahaffey, — N.C. App. —, 528 S.E.2d 381, 2000 N.C. App. LEXIS 426 (2000).

III. PLEADING AND PRACTICE.

Expert Appraisal. — Expert appraiser was not required to calculate the value of tract taken according to the strict formula set forth in this section. DOT v. Tilley, — N.C. App. —, 524 S.E.2d 83, 2000 N.C. App. LEXIS 16 (2000).

Jury Must Strictly Adhere to Formula. — A jury was required to calculate the value of tract taken according to the strict formula set forth in this section. DOT v. Tilley, — N.C. App. —, 524 S.E.2d 83, 2000 N.C. App. LEXIS 16 (2000).

§ 136-119. Costs and appeal.

CASE NOTES

Applied in DOT v. Rowe, 351 N.C. 172, 521 S.E.2d 707 (1999).

Article 10A.

Litter Prevention Account.

§ 136-125.1. Litter Prevention Account.

There is established under the control and direction of the Department of Transportation the Litter Prevention Account. The Account shall be a nonreverting special revenue account within the Highway Fund and shall consist of moneys credited to the Account under G.S. 20-81.12(b15) from the sale of litter prevention special registration plates. The Department of Transportation shall allocate the funds in the Account to reduce litter in the State. (2000-159, s. 9(a).)

Editor's Note. — Session Laws 2000-159, s. 9(d), directs the Commission to make a final report of its recommendations regarding the prevention and removal of litter, including any proposed legislation, to the 2001 General Assembly.

Session Laws 2000-159, s. 11, made this Article effective August 2, 2000.

§ 136-125.2. Report.

The Department of Transportation shall report no later than October 1 of each year to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission regarding the allocation of funds from the Litter Prevention Account. The report shall include all receipts to and allocations from the Account made during the previous fiscal year and shall explain how each allocation serves to reduce litter in the State. (2000-159, s. 9(a).)

Editor's Note. — Session Laws 2000-159, s. 9(b), provides that, notwithstanding G.S. 136-125.2, as enacted by the act, the first report required under G.S. 136-125.2 is due no later than October 1, 2002.

Article 11.

Outdoor Advertising Control Act.

§ 136-128. Definitions.

Editor's Note. —

Session Laws 1999-436, s. 1, effective August 10, 1999, as amended by Session Laws 2000-101, s. 1, directed the Joint Legislative Transportation Oversight Committee to study whether the additional erection of outdoor advertising as defined in G.S. 136-128(3), which is visible and intended to be read from the highway right-of-way, along the portion of Interstate Highway 40 from the Orange-Alamance county line to the municipal limits of the City of Wilmington, should be prohibited and to study the advisability of the Department of Transportation allowing owners of billboards to enter upon the right-of-way and destroy vegetation which might obscure their advertising. The Committee was to report its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly. A moratorium imposed by the 1999 session law on the erection of new outdoor advertising along the aforementioned portion of Interstate Highway 40 but not applying to outdoor advertising described in G.S. 136-129(1), (2), or (3), and initially expiring July 1, 2000, was extended by the 2000 session law, pursuant to recommendation by the Environmental Review Commission.

Session Laws 2000-101, s. 2, imposes a moratorium on the issuance of permits for the construction of new outdoor advertising along the portion of Interstate Highway 40 from the Orange-Alamance County line to the municipal limits of the City of Wilmington, although this moratorium does not apply to outdoor advertising described in subdivisions (1), (2), and (3) of G.S. 136-129.

Session Laws 2000-101, s. 3, makes the act effective July 1, 2000, and provides for its expiration July 1, 2001.

§ 136-129. Limitations of outdoor advertising devices.

Editor's Note. — Session Laws 1999-436, s. 1, effective August 10, 1999, as amended by Session Laws 2000-101, s. 1, directed the Joint Legislative Transportation Oversight Committee to study whether the additional erection of outdoor advertising as defined in G.S. 136-128(3), which is visible and intended to be read from the highway right-of-way, along the portion of Interstate Highway 40 from the Orange-Alamance county line to the municipal limits of the City of Wilmington, should be prohibited and to study the advisability of the Department of Transportation allowing owners of billboards to enter upon the right-of-way and destroy vegetation which might obscure their advertising. The Committee was to report its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly. A moratorium imposed by the 1999 session law on the erection of new outdoor advertising along the aforementioned portion of Interstate Highway 40 but not applying to outdoor advertising described in G.S. 136-129(1), (2), or (3), and initially expiring July 1, 2000, was extended by the 2000 session law, pursuant to recommendation by the Environmental Review Commission.

Session Laws 2000-101, s. 2, imposes a moratorium on the issuance of permits for the construction of new outdoor advertising along the portion of Interstate Highway 40 from the Orange-Alamance County line to the municipal limits of the City of Wilmington, although this moratorium does not apply to outdoor advertising described in subdivisions (1), (2), and (3) of G.S. 136-129.

Session Laws 2000-101, s. 3, makes the act effective July 1, 2000, and provides for its expiration July 1, 2001.

Article 14.

North Carolina Highway Trust Fund.

§ 136-176. (For contingent repeal see editor's note) Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.

(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, alternative fuel, and road tax revenue deposited in the Fund under G.S. 105-449.125, 105-449.134, and 105-449.43, respectively.

(2) Motor vehicle use tax deposited in the Fund under G.S. 105-187.9.

(3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.

(4) **(Suspended from July 1, 1998 through June 30, 2001)** Revenue available from the retirement of refunding bonds issued to repay highway construction bonds and deposited in the Fund under G.S. 136-183.

(5) Interest and income earned by the Fund.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and one-half percent (4.5%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. 136-179 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.
(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.
(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.
(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

The Department must administer funds allocated under subdivisions (1), (2), and (4) of this subsection in a manner that ensures that sufficient funds are available to make the debt service payments on bonds issued under the State Highway Bond Act of 1996 as they become due.

(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund may be used, the amount of federal funds received plus the amount of any funds from the Highway Fund that were used to match the federal funds may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143-28.1 only for the two bienniums following the year in which the contract is let. (1989, c. 692, s. 1.1; c. 770, ss. 68.2, 74.6; 1989 (Reg. Sess., 1990), c. 1024, s. 46(a), (b); 1991, c. 193, s. 9; c. 280, s. 1; c. 689, s. 62; 1995, c. 390, s. 27; 1995 (Reg. Sess., 1996), c. 590, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 19.4(a); 1998-212, s. 27.2; 1999-237, s. 27.1; 2000-140, s. 31.)

Editor's Note. —
For contingent repeal of subdivision (a)(4), see the editor's note under § 136-175 in the main volume.

Effect of Amendments. — Session Laws 2000-140, s. 31, effective July 21, 2000, substituted "G.S. 136-180" for "G.S. 136-80" in subdivision (b)(2).

Article 16.

Planning.

§ 136-200. Definitions.

As used in this Article:

(1) "Conformity" means the extent to which transportation plans, programs, and projects conform to federal air quality requirements as specified in 40 Code of Federal Regulations, Part 93, Subpart A (1 July 1998 Edition).

(1a) "Consolidated Metropolitan Planning Organization" means a metropolitan planning organization created on or after January 1, 2001, through a memorandum of understanding by the consolidation of two or more metropolitan planning organizations in existence prior to January 1, 2001, and in accordance with 23 U.S.C. § 134.

(2) "Department" means the North Carolina Department of Transportation.

(3) "Interface" means a relationship between streams of traffic that efficiently and safely maximizes the mobility of people and goods within and through urbanized areas and minimizes transportation-related fuel consumption and air pollution.

(4) "Metropolitan Planning Organization" or "MPO" means an agency that is designated or redesignated by a memorandum of understanding as a Metropolitan Planning Organization in accordance with 23 U.S.C. § 134.

(5) "Regionally significant project" has the same meaning as under 40 Code of Federal Regulations 93.101 (1 July 1998 Edition).

(6) "Regional travel demand model" means a model of a region, defined in the model, that is approved by the Department and each Metropolitan Planning Organization whose boundaries include any part of the region and that uses socioeconomic data and projections to predict demands on a transportation network. (1999-328, s. 4.10; 2000-80, ss. 1-3.)

Effect of Amendments. — Session Laws 2000-80, ss. 1-3, effective January 1, 2001, added subdivision (1a); , inserted "North Carolina" in subdivision (2); and inserted "or redesignated by a memorandum of understanding" in subdivision (4).

§ 136-200.1. Metropolitan planning organizations recognized.

Metropolitan planning organizations established pursuant to the provisions of 23 U.S.C. § 134 are hereby recognized under the law of the State. Metropolitan planning organizations in existence on the effective date of this section continue unaffected until redesignated or restructured in accordance with the provisions of and according to the procedures established by 23 U.S.C. § 134 and this Article. The provisions of this Article are intended to supplement the provisions of 23 U.S.C. § 134. In the event any provision of this Article is deemed inconsistent with the requirements of 23 U.S.C. § 134, the provisions of federal law shall control. (2000-80, s. 4.)

Editor's Note. — Session Laws 2000-80, s. 8, made this section effective January 1, 2001.

§ 136-200.2. Decennial review of metropolitan planning organization boundaries, structure, and governance.

(a) Evaluation. — Following each decennial census, and more frequently if requested by an individual metropolitan planning organization, the Governor and the Secretary of Transportation, in cooperation with the affected metropolitan planning organization or organizations, shall initiate an evaluation of the boundaries, structure, and governance of each metropolitan planning organization in the State. The goal of the evaluation shall be to examine the need for and to make recommendations for adjustments to metropolitan planning organization boundaries, structure, or governance in order to ensure compliance with the objectives of 23 U.S.C. § 134. The Secretary shall submit a report of the evaluation process to the Governor and to the Joint Legislative Transportation Oversight Committee.

(b) Factors for Evaluation. — The evaluation of the area, structure, and governance of each metropolitan planning organization shall include all of the following factors:

(1) Existing and projected future commuting and travel patterns and urban growth projections.
(2) Integration of planning with existing regional transportation facilities, such as airports, seaports, and major interstate and intrastate road and rail facilities.
(3) Conformity with and support for existing or proposed regional transit and mass transportation programs and initiatives.
(4) Boundaries of existing or proposed federally designated air quality nonattainment areas or air-quality management regions.
(5) Metropolitan Statistical Area boundaries.
(6) Existing or proposed cooperative regional planning structures.
(7) Administrative efficiency, availability of resources, and complexity of management.
(8) Feasibility of the creation of interstate metropolitan planning organizations.
(9) Governance structures, as provided in subsection (c) of this section.

(c) Metropolitan Planning Organization Structures. — The Governor and Secretary of Transportation, in cooperation with existing metropolitan planning organizations and local elected officials, may consider the following changes to the structure of existing metropolitan planning organizations:

(1) Expansion of existing metropolitan planning organization boundaries to include areas specified in 23 U.S.C. § 134(c).
(2) Consolidation of existing contiguous metropolitan planning organizations in accordance with the redesignation procedure specified in 23 U.S.C. § 134(b).
(3) Creation of metropolitan planning organization subcommittees with responsibility for matters that affect a limited number of constituent jurisdictions, as specified in a memorandum of understanding redesignating a metropolitan planning organization in accordance with the provisions of 23 U.S.C. § 134.
(4) Formation of joint committees or working groups among contiguous nonconsolidated metropolitan planning organizations, with such powers and responsibilities as may be delegated to such joint committees pursuant to their respective memoranda of understanding.
(5) Creation of interstate compacts pursuant to 23 U.S.C. § 134(d) to address coordination of planning among metropolitan planning organizations located in this State and contiguous metropolitan planning organizations located in adjoining states.
(6) Delegation by the governing board of a metropolitan planning organization of part or all of its responsibilities to a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes, if the regional transportation authority is eligible to exercise that authority under 23 U.S.C. § 134.

(d) Optional Governance Provisions. — In addition to any other provisions permitted or required pursuant to 23 U.S.C. § 134, the memorandum of understanding, creating, enlarging, modifying, or restructuring a metropolitan planning organization may also include any of the following provisions relating to governance:

(1) Distribution of voting power among the constituent counties, municipal corporations, and other participating organizations on a basis or bases other than population.

(2) Membership and representation of regional transit or transportation authorities or other regional organizations in addition to membership of counties and municipal corporations.
(3) Requirements for weighted voting or supermajority voting on some or all issues.
(4) Provisions authorizing or requiring the delegation of certain decisions or approvals to less than the full-voting membership of the metropolitan planning organization in matters that affect only a limited number of constituent jurisdictions.
(5) Requirements for rotation and sharing of officer positions and committee chair positions in order to protect against concentration of authority within the metropolitan planning organization.
(6) Any other provision agreed to by the requisite majority of jurisdictions constituting the metropolitan planning organization.

(e) Effect of Evaluation. — Upon completion of the evaluation required under this section, a metropolitan planning organization may be restructured in accordance with the procedure contained in 23 U.S.C. § 134(b)(5).

(f) Assistance. — The Department may provide staff assistance to metropolitan planning organizations in existence prior to January 1, 2001, that are considering consolidation on or after January 1, 2001. In addition, the Department may provide funding assistance to metropolitan planning organizations considering consolidation, upon receipt of a letter of intent from jurisdictions representing seventy-five percent (75%) of the affected population, including the central city, in each metropolitan planning organization considering consolidation. (2000-80, s. 5.)

Editor's Note. — Session Laws 2000-80, s. 8, made this section effective January 1, 2001.

§ 136-200.3. Additional provisions applicable to consolidated metropolitan planning organizations.

(a) Limit on Basis for Project Objection. — Beginning with the 2004 State Transportation Improvement Program, neither the State nor a consolidated metropolitan planning organization shall have a basis to object to a project that is proposed for funding in the Transportation Improvement Program, provided that the project does not affect projects previously programmed, if the project is included in a mutually adopted plan developed pursuant to G.S. 136-66.2, and is consistent with the project selection criteria contained in the memorandum of understanding creating the consolidated metropolitan planning organization.

(b) Project Ranking Priorities. — Beginning with the 2004 State Transportation Improvement Program, and subject to the availability of funding, the Department of Transportation, when developing the Transportation Improvement Program, shall abide by the project ranking priorities approved by a:
(1) Consolidated metropolitan planning organization for any project within its jurisdiction, if the project is not a National Highway System or bridge and Interstate maintenance program project.
(2) Regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes, for any project that all metropolitan planning organizations within the authority's jurisdiction have delegated responsibility, if the project is not a National Highway System or bridge and Interstate maintenance program project. (2000-80, s. 6.)

Editor's Note. — Session Laws 2000-80, s. 8, made this section effective January 1, 2001.

§ 136-200.4. Additional requirements for metropolitan planning organizations located in nonattainment areas.

(a) Consultation and Single Conformity Plan Required. — When an area of the State is designated as non-attainment under the federal Clean Air Act (42 U.S.C. § 7401, et seq.) all metropolitan planning organizations with at least twenty-five percent (25%) of their area of jurisdiction located within the boundaries of the nonattainment area shall consult on appropriate emissions reduction strategies and shall adopt a single, unified plan for achieving conformity. The strategies set forth in the unified plan shall be incorporated by each affected metropolitan planning organization into its respective long range transportation plan developed pursuant to 23 U.S.C. § 134(g).

(b) Effect of Failure to Adopt Required Plan. — If a metropolitan planning organization does not comply with the provisions of subsection (a) of this section within one year after designation of at least twenty-five percent (25%) of the metropolitan planning organization's area of jurisdiction as nonattainment under the federal Clean Air Act (42 U.S.C. § 7401, et seq.), the Department shall not allocate any of the following funds to projects within the metropolitan planning organization's area of jurisdiction:

(1) One hundred percent (100%) State-funded road construction funds.
(2) State matching funds for any road construction or transit capital project.
(3) Federal congestion mitigation and air quality improvement program funds.

(c) Mandatory Evaluation and Report. — Each metropolitan planning organization located in whole or in part in areas designated as nonattainment under the federal Clean Air Act (42 U.S.C. § 7401 et seq.) shall complete the evaluation process provided for in G.S. 136-200.2 and submit its findings and recommendations to the Department of Transportation within one year of the effective date of designation as nonattainment. A metropolitan planning organization may request and be granted by the Department an extension if the metropolitan planning organization can show cause for the extension. Extensions shall be granted in no more than one year increments. (2000-80, s. 7.)

Editor's Note. — Session Laws 2000-80, s. 8, made this section effective January 1, 2001.

§§ 136-204 through 136-209: Reserved for future codification purposes.

Article 17.

Rural Transportation Planning Organizations.

§ 136-210. Definitions.

As used in this Article, "Rural Transportation Planning Organization" means a voluntary organization of local elected officials or their designees and representatives of local transportation systems formed by a memorandum of understanding with the Department of Transportation to work cooperatively with the Department to plan rural transportation systems and to advise the Department on rural transportation policy. (2000-123, s. 2.)

Editor's Note. — Session Laws 2000-123, s. 3, provides that nothing in the act shall require the General Assembly to appropriate funds to implement it and further provides that neither the Department of Transportation nor the General Assembly shall reallocate any road maintenance funds to implement it.

Session Laws 2000-123, s. 4, directs the Department to report to the Joint Legislative Transportation Oversight Committee on the implementation of the act on or before December 1, 2000.

Session Laws 2000-123, s. 5, made this Article effective July 1, 2000.

§ 136-211. Department authorized to establish Rural Transportation Planning Organizations.

(a) Authorization. — The Department of Transportation is authorized to form Rural Transportation Planning Organizations.

(b) Area Represented. — Rural Transportation Planning Organizations shall include representatives from contiguous areas in three to fifteen counties, with a total population of the entire area represented of at least 50,000 persons according to the latest population estimate of the Office of State Planning. Areas already included in a Metropolitan Planning Organization shall not be included in the area represented by a Rural Transportation Planning Organization.

(c) Membership. — The Rural Transportation Planning Organization shall consist of local elected officials or their designees and representatives of local transportation systems in the area as agreed to by all parties in a memorandum of understanding.

(d) Formation; Memorandum of Understanding. — The Department shall notify local elected officials and representatives of local transportation systems around the State of the opportunity to form Rural Transportation Planning Organizations. The Department shall work cooperatively with interested local elected officials, their designees, and representatives of local transportation systems to develop a proposed area, membership, functions, and responsibilities of a Rural Transportation Planning Organization. The agreement of all parties shall be included in a memorandum of understanding approved by the membership of a proposed Rural Transportation Planning Organization and the Secretary of the Department of Transportation. (2000-123, s. 2.)

§ 136-212. Duties of Rural Transportation Planning Organizations.

The duties of a Rural Transportation Planning Organization shall include, but not be limited to:

(1) Developing, in cooperation with the Department, long-range local and regional multimodal transportation plans.

(2) Providing a forum for public participation in the transportation planning process.

(3) Developing and prioritizing suggestions for transportation projects the organization believes should be included in the State's Transportation Improvement Program.

(4) Providing transportation-related information to local governments and other interested organizations and persons. (2000-123, s. 2.)

§ 136-213. Administration and staff.

(a) Administrative Entity. — Each Rural Transportation Planning Organization, working in cooperation with the Department, shall select an appropriate administrative entity for the organization. Eligible administrative entities include, but are not limited to, regional economic development agencies, regional councils of government, chambers of commerce, and local governments.

(b) Professional Staff. — The Department, each Rural Transportation Planning Organization, and any adjacent Metropolitan Planning Organization shall cooperatively determine the appropriate professional planning staff needs of the organization.

(c) Funding. — If funds are appropriated for that purpose, the Department may make grants to Rural Transportation Planning Organizations for professional planning staff. The members of the Rural Transportation Planning Organization shall contribute at least twenty percent (20%) of the cost of any staff resources employed by the organization. The Department may make additional planning grants to economically distressed counties, as designated by the North Carolina Department of Commerce. (2000-123, s. 2.)

Chapter 138.

Salaries, Fees and Allowances.

§ 138-6. Travel allowances of State officers and employees.

(a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

(1) For transportation by privately owned automobile, the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual cost of tolls paid. Any other law which sets a mileage rate by referring to the rate set herein, instead establishes a rate of twenty-five cents (25¢) per mile. No reimbursement shall be made for the use of a personal car in commuting from an employee's home to his duty station in connection with regularly scheduled work hours. Any designation of an employee's home as his duty station by a department head shall require prior approval by the Office of State Budget, Planning, and Management on an annual basis.

(2) For bus, railroad, Pullman, or other conveyance, actual fare.

(3) For expenses incurred for subsistence, payment of eighty-one dollars ($81.00) per day when traveling in-state or ninety-three dollars ($93.00) per day when traveling out-of-state. Payment of sales tax, lodging tax, local tax, or service fees applied to the cost of lodging are to be paid in addition to the daily subsistence amount. The employee may exceed the part of the ceiling allocated for lodging without approval for overexpenditure provided that the total lodging and food reimbursement does not exceed the maximum provided by this subdivision. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:

a. When an overnight stay is required reimbursement is allowed while an employee is in travel status;

b. When the cost of the lunch is included as part of a registration fee for a formal congress, conference, assembly, or convocation, by whatever name called. Such assembly must involve the active participation of persons other than the employees of a single State department, institution, or agency and must be necessary for conducting official State business; or

c. When the State employee is a member of, or providing staff assistance to, a State board, commission, committee, or council which operates from funds deposited with the State Treasurer, and the lunch is preplanned as part of the meeting for the entire board, commission, committee, or council.

(4) For convention registration fees not to exceed the actual amount expended as shown by a valid receipt or invoice.

(5) Effective July 1, 2001, and effective July 1 of each odd-numbered year thereafter, the Director of the Budget shall revise the amounts of

payment of subsistence per day when traveling in-State and out-of-state by an amount equal to the percentage increase in the Consumer Price Index for All Urban Consumers for the most recent 24-month period.

(b) Out-of-state travel on official business by the officers and employees of State departments, institutions, and agencies which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget.

(c) Reimbursement of actual costs of overnight lodging, whether in-state or out-of-state, must be documented by a receipt of actual lodging expenses from a commercial establishment. This documentation shall be attached to the reimbursement request. All reimbursement requests shall be filed for approval and payment within 30 days after the travel period for which the reimbursement is being requested. (1961, c. 833, s. 6; 1963, c. 1049, s. 2; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, ss. 1, 2; 1973, c. 595, s. 1; c. 1456; 1975, c. 892, s. 1; 1977, c. 928; 1977, 2nd Sess., c. 1136, s. 38.1; c. 1237, ss. 1, 2; 1979, c. 34, s. 1; c. 1002, s. 1; c. 1050, s. 1; 1979, 2nd Sess., c. 1137, s. 26; 1981, c. 859, ss. 57-59; 1983, c. 761, s. 22; c. 913, s. 27; c. 923, s. 217; 1985, c. 757, s. 201(a); 1985 (Reg. Sess., 1986), c. 1014, s. 39(b); 1987, c. 738, ss. 58(c), 58(d), 60; 1987 (Reg. Sess., 1988), c. 1086, s. 30(a); c. 1100, s. 38(a); 1993, c. 321, s. 24(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.27A; 1998-212, s. 28.20(a); 1999-237, s. 28.20; 2000-140, s. 93.1(a).)

Effect of Amendments. —
Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subdivision (a)(1).

§ 138-8. Moving expenses of State employees.

Subject to the rules and regulations promulgated by the Office of State Budget, Planning, and Management and approved by the Director of the Budget, any department, institution or agency of the State is hereby authorized to pay, from funds available to it, reasonable expenses for transporting the household goods of an employee and members of his household when the transfer of the employee is considered by the Director of the Budget to be in the best interests of the State. (1977, c. 802, s. 15; 1979, 2nd Sess., c. 1137, s. 27; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in this section.

Chapter 141.

State Boundaries.

§ 141-6. Eastern boundary of State; jurisdiction over territory within littoral waters and lands under same.

OPINIONS OF ATTORNEY GENERAL

Ambulatory Seaward Boundary Consistent with Constitution. — While a proposal to permanently fix the seaward boundary for the State at specific coordinates would violate both subsection (a) of this section, and Article XIV, § 2 of the N.C. Constitution, which this section implements, the acceptance of an ambulatory boundary, which merely represents the seaward boundary's location at a certain time, and moves with changes to the shoreline, whether by erosion, accretion or fill deposition, would be consistent with the constitution and not require amendment of this section; a reading of the State constitutional provision together with this section and the case law reveal them to require that the eastern boundary always remain at a distance of three geographical miles from the extreme low water mark (ELWM). See opinion of Attorney General to Gary W. Thompson, Chief, North Carolina Geodetic Survey, 1998 N.C.A.G. 7 (2/11/98).

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act.

Article 1B.

Capital Improvement Planning Act.

Article 3.

Purchases and Contracts.

Article 3B.

Energy Conservation in Public Facilities.

Part 1. Energy Policy and Life-Cycle Cost Analysis.

Article 9.

Building Code Council and Building Code.

Article 9A.

North Carolina Manufactured Housing Board — Manufactured Home Warranties.

Article 9F.

North Carolina Home Inspector Licensure Board.

Article 10.

Various Powers and Regulations.

Article 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

ARTICLE 1.

Executive Budget Act.

§ 143-1. Scope and definitions.

This Article shall be known, and may be cited, as "The Executive Budget Act." Whenever the word "Director" is used herein, it shall be construed to mean "Director of the Budget." Whenever the word "Commission" is used herein, it shall be construed to mean "Advisory Budget Commission," if the context shows that it is used with reference to any power or duty belonging to the Office of State Budget, Planning, and Management and to be performed by it, but it shall mean when used otherwise any State agency, and any other agency, person or commission by whatever name called, that uses or expends or receives any State funds. "State funds" are hereby defined to mean any and all moneys appropriated by the General Assembly of North Carolina, or moneys collected by or for the State, or any agency thereof, pursuant to the authority granted in any of its laws. (1925, c. 89, s. 1; 1929, c. 100, s. 1; 1957, c. 269, s. 2; 1979, 2nd Sess., c. 1137, s. 37; 2000-140, s. 93.1(a).)

Local Modification. — (As to Chapter 143) Cabarrus: 2000-87; 2000-88, s.1; (As to Chapter 143) city of Concord: 2000-88, s. 1. For additional local modifications to this section, see the main volume.

Editor's Note. — Session Laws 1983, c. 761, s. 257; Session Laws 1983 (Reg. Sess., 1984), c. 971, s. 5 and c. 1034, s. 252; Session Laws 1985, c. 479, s. 228; Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 238 and c. 1018, s. 18; Session Laws 1987, c. 738, s. 235 and c. 830, s. 119; Session Laws 1987 (Reg. Sess., 1988), c. 886, s. 4, c. 1086, s. 166, c. 1100, s. 41 and c. 1101, s. 15; 1989, c. 500, s. 125 and c. 752, s. 163; 1989 (Reg. Sess., 1990), c. 1066, s. 147 and c. 1074, s. 39; Session Laws 1991, c. 689, s. 350; Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 177; Session Laws 1993, c. 321, s. 319; Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43; Session Laws 1994, Extra Session, c. 24, s. 69; Session Laws 1995, c. 324, s. 28.1; Session Laws 1998-212, s. 30; Session Laws 1999-237, s. 30; and Session Laws 2000-67, s. 28, provide that the provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in the act by reference.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 23, effective July 1, 2000, consolidates the Office of State Budget and Management and the Office of State Planning into the Office of State Budget, Planning, and Management under the Office of the Governor. The Department of Environment and Natural Resources is to transfer the responsibility for development of topographic mapping through a cooperative agreement with the U.S. Geological Survey and funds to match federal funding under the agreement from the Division of Land Resources to this newly created Office.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in this section.

OPINIONS OF ATTORNEY GENERAL

Grants And Gifts. — The Secretary of State has the power, without further legislative authorization, to accept federal grants and private gifts to assist her in implementing her duties under the Nonprofit Corporation Act so long as those grants or gifts are not contrary to State law and so long as she complies with the applicable provisions of the Executive Budget Act. See opinion of Attorney General to Sheila Stafford Pope, General Counsel, Secretary of State, N.C. General Assembly, 1999 N.C.A.G. 17 (6/21/99).

§ 143-2. Purposes.

It is the purpose of this Article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be ex officio Director of the Budget. The purpose of this Article is to include within the powers of the Office of State Budget, Planning, and Management all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Office of State Budget, Planning, and Management in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Director of the Budget shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise. (1925, c. 89, s. 2; 1929, c. 100, s. 2; 1955, c. 578, s. 1; c. 743; 1957, c. 269, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 859, s. 47.1; 1983 (Reg. Sess., 1984), c. 1109, s. 10; 1985, c. 290, s. 1; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in this section.

§ 143-3.5. Coordination of statistics; fiscal analysis required for any bill proposed by a State agency that affects the budget.

(a) It shall be the duty of the Director, through the Office of State Budget, Planning, and Management to coordinate the efforts of governmental agencies in the collection, development, dissemination and analysis of official economic, demographic and social statistics pertinent to State budgeting. The Director shall:

(1) Prepare and release the official demographic and economic estimates and projections for the State;

(2) Conduct special economic and demographic analyses and studies to support statewide budgeting;

(3) Develop and coordinate cooperative arrangements with federal, State and local governmental agencies to facilitate the exchange of data to support State budgeting;

(4) Compile, maintain, and disseminate information about State programs which involve the distribution of State aid funds to local governments including those variables used in their allocation;

(5) Develop and maintain in cooperation with other State and local governmental agencies, an information system providing comparative data on resources and expenditures of local governments; and

(6) Report major trends that influence revenues and expenditures in the State budget in the current fiscal year and that may influence revenues and expenditures over the next five fiscal years.

Every fiscal analysis prepared by the Director or the Office of State Budget, Planning, and Management addressing the State budget outlook shall encompass the upcoming five-year period. Every fiscal analysis prepared by the Director or the Office of State Budget, Planning, and Management addressing the impact of proposed legislation on the State budget shall estimate the impact for the first five fiscal years the legislation would be in effect. To minimize duplication of effort in collecting or developing new statistical series pertinent to State planning and budgeting, including contractual arrangements, State agencies must submit to the Director proposed procedures and funding requirements.

(b) Any bill proposed by an executive or judicial department, agency, institution, board, or commission that affects the State budget shall be accompanied by a fiscal analysis. The fiscal analysis shall estimate the impact of the legislation on the State budget for the first five fiscal years the legislation would be in effect.

(c) This section shall not apply to the General Assembly, any of its committees and subcommittees, the Legislative Research Commission, the Legislative

Services Commission, or any other committee or commission in the legislative branch. (1979, 2nd Sess., c. 1137, s. 41; 1991, c. 689, s. 341; 1993 (Reg. Sess., 1994), c. 769, s. 11.1(b); 2000-140, s. 93.1(f).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(f), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management and the Office of State Planning" in subsection (a) and substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" twice in the paragraph following subdivision (a)(6).

§ 143-4. Advisory Budget Commission.

(a) Five Senators appointed by the President Pro Tempore of the Senate, five Representatives appointed by the Speaker of the House and five persons appointed by the Governor shall constitute the Advisory Budget Commission. If the Governor appoints any members of the General Assembly to the Advisory Budget Commission, he must appoint an equal number from the Senate and House of Representatives.

(b) The Chairman of the Advisory Budget Commission shall also receive an additional two thousand five hundred dollars ($2,500) payable in quarterly installments, for expenses.

The members of the Advisory Budget Commission shall receive no per diem compensation for their services, but shall receive the same subsistence and travel allowance as are provided for members of the General Assembly for services on interim legislative committees.

(c) The Governor may call a meeting of the Commission during the period beginning with the convening of each regular session and ending 30 days later. Otherwise, meetings of the Commission may be called by the Governor or by the chairman.

Members of the Commission shall take the oath of office at or before the first meeting of the Commission they attend.

The Office of State Budget, Planning, and Management, under the direction of the State Budget Officer, may serve as staff to the Commission. The State Budget Officer shall designate a secretary to the Commission.

(d) After the agenda for a meeting has been delivered to the members of the Commission, no other item shall be considered at that meeting except upon the approval of a majority of the members present and voting.

Except for the Governor, persons who are not members of the Commission may address the Commission only at the invitation of the Governor, the chairman, or a majority of the members present and voting.

A vacancy in one of the seats on the Commission shall be filled by appointment by the officer who appointed the person causing the vacancy.

(e) Before the end of each fiscal year or as soon thereafter as practicable, the Advisory Budget Commission shall contract with a competent certified public accountant who is in no way otherwise affiliated with the State or with any agency thereof to conduct a thorough and complete audit of the receipts and expenditures of the State Auditor's office during the immediate fiscal year just ended, and to report to the Advisory Budget Commission on such audit not later than the following October first. A sufficient number of copies of such audit shall be provided so that at least one copy is filed with the Governor's Office, one copy with the Office of State Budget, Planning, and Management and at least two copies filed with the Secretary of State.

(f) In all matters where action on the part of the Advisory Budget Commission is required by this Article, 10 members of the Commission shall constitute a quorum for performing the duties or acts required by the Commission. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295; 1951, c. 768; 1955, c. 578, s. 3; 1957,

c. 269, s. 2; 1973, c. 820, ss. 1-3; 1979, 2nd Sess., c. 1137, ss. 25, 29.1, 37; 1981, c. 859, s. 47.1; 1983, c. 48, ss. 1-3; 1983 (Reg. Sess., 1984), c. 1034, s. 148; 1985, c. 3, ss. 1-2.1; c. 290, s. 3; 1985 (Reg. Sess., 1986), c. 955, ss. 56, 57; 1989, c. 781, s. 41; 1991, c. 739, s. 22; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" throughout this section.

§ 143-6. Information from departments and agencies asking State aid.

(a) On or before the first day of September in the even-numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

(b) Any department, bureau, division, officer, board, commission, institution, or other State agency or undertaking desiring to request financial aid from the State for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall, before making any such request for State financial aid, submit to the Department of Administration a statement of its needs in terms of space and other physical requirements, and shall furnish the Department with such additional information as it may request. The Department of Administration shall then review the statement of needs submitted by the requesting department, bureau, division, officer, board, commission, institution, or other State agency or undertaking and perform additional analysis, as necessary, to comply with G.S. 143-341.

(b1) All requests for financial aid for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall be accompanied by a certification from the Department of Administration as outlined in G.S. 143-341. The General Assembly may provide advanced planning funds but shall only provide construction funds when the requirements of this subsection have been met. This subsection shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000).

(c) On or before the first day of September in the even-numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies receiving or asking financial aid or support from the State, under the authority of any general law of the State, shall furnish the Director with the following information:

(1) The amount of State funds disbursed in the immediately preceding two fiscal years and the purpose for which the funds were disbursed and used, the amount being requested as continuation funds for the upcoming fiscal year, and the justification for continued State support; and

(2) Justification for continued State support shall include information on the extent of the public benefit being derived from State support.

(d) The Office of State Budget, Planning, and Management and the Director of the Budget shall provide to the General Assembly, on or before January 15 of each odd-numbered year, a report that adequately and fairly presents the information required in this section. (1925, c. 89, s. 6; 1929, c. 100, s. 6; 1957, c. 584, s. 4; 1965, c. 310, s. 4; 1991, c. 689, s. 190(b); 1998-45, s. 2; 2000-140, s. 93.1(a).)

Effect of Amendments. —
Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (d).

§ 143-6.1. Report on use of State funds by non-State entities.

(a) Disbursement and Use of State Funds. — Every corporation, organization, and institution that receives, uses, or expends any State funds shall use or expend the funds only for the purposes for which they were appropriated by the General Assembly or collected by the State. State funds include federal funds that flow through the State. For the purposes of this section, the term "grantee" means a corporation, organization, or institution that receives, uses, or expends any State funds. The State may not disburse State funds appropriated by the General Assembly to any grantee or collected by the State for use by any grantee if that grantee has failed to provide any reports or financial information previously required by this section. In addition, before disbursing the funds, the Office of State Budget, Planning, and Management may require the grantee to supply information demonstrating that the grantee is capable of managing the funds in accordance with law and has established adequate financial procedures and controls. All financial statements furnished to the State Auditor pursuant to this section, and any audits or other reports prepared by the State Auditor, are public records.

(b) State Agency Reports. — A State agency that receives State funds and then disburses the State funds to a grantee must identify the grantee to the State Auditor, unless the funds were for the purchase of goods and services. The State agency must submit documents to the State Auditor in a prescribed format describing standards of compliance and suggested audit procedures sufficient to give adequate direction to independent auditors performing audits.

(c) Grantee Receipt and Expenditure Reports. — A grantee that receives, uses, or expends between fifteen thousand dollars ($15,000) and three hundred thousand dollars ($300,000) in State funds annually, except when the funds are for the purchase of goods or services, must file annually with the State agency that disbursed the funds a sworn accounting of receipts and expenditures of the State funds. This accounting must be attested to by the treasurer of the grantee and one other authorizing officer of the grantee. The accounting must be filed within six months after the end of the grantee's fiscal year in which the State funds were received. The accounting shall be in the form required by the disbursing agency. Each State agency shall develop a format for these accountings and shall obtain the State Auditor's approval of the format.

(d) Grantee Audit Reports. — A grantee that receives, uses, or expends State funds in the amount of three hundred thousand dollars ($300,000) or more annually, except when the funds are for the purchase of goods or services, must file annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor. The financial statement must be audited in accordance with standards prescribed by the State Auditor to assure that State funds are used for the purposes provided by law.

(e) Federal Reporting Requirements. — Federal law may require a grantee to make additional reports with respect to funds for which reports are required under this section. Notwithstanding the provisions of this section, a grantee may satisfy the reporting requirements of subsection (c) of this section by submitting a copy of the report required under federal law with respect to the same funds or by submitting a copy of the report described in subsection (d) of this section.

(f) Audit Oversight. — The State Auditor has audit oversight, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee that receives, uses, or expends State funds. Such a grantee must, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of State funds. The grantee must furnish any additional financial or budgetary information requested by the State Auditor. (1989, c. 752, s. 54; 1991, c. 689, ss. 12, 190(a); 1993, c. 321, s. 45; 1995 (Reg. Sess., 1996), c. 748, s. 2.1; 1997-443, s. 34.11; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (a).

§ 143-10.1A. Budget required to include State cost of local programs — Continuation and expansion costs.

Effective July 1, 1991, the Office of State Budget, Planning, and Management and the Director of the Budget, with the advice of the Advisory Budget Commission, shall prepare the State budget in a format that adequately and fairly reflects the continuation costs for the State's share of locally operated programs established by statute or State appropriation. These continuation costs shall be computed using the same budget preparation guidelines and rules prepared by the Office of State Budget, Planning, and Management for use in State agency and institution budgets. Furthermore, in the projections for the expansion costs related to employee compensation, the budget shall include the expansion costs necessary to cover the State's share of salary and salary-related items for employees in locally operated State-funded programs. Local governments or organizations spending State funds to operate local programs shall provide necessary information to the Office of State Budget, Planning, and Management to establish the necessary continuation and expansion costs. (1989 (Reg. Sess., 1990), c. 1066, s. 75; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" throughout this section.

§ 143-10.2. Limit on number of State employees.

The total number of permanent State-funded employees, excluding employees in the State's public school system funded by way of State aid to local public school units, shall not be increased by the end of any State fiscal year by a greater percentage than the percentage rate of the residential population growth for the State of North Carolina. The percentage rates shall be computed by the Office of State Budget, Planning, and Management. The population growth shall be computed by averaging the rate of residential population growth in each of the preceding 10 fiscal years as stated in the annual estimates of residential population in North Carolina made by the United States Census Bureau. The growth rate of the number of employees shall be computed by averaging the rate of growth of State employees in each of the preceding 10 fiscal years as of July 1 of each fiscal year as stated in the State Budget. (1989, c. 752, s. 46(a); 1991, c. 689, s. 343; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

§ 143-10.3. Strategic planning process.

(a) The Director, through the Office of State Budget, Planning, and Management, shall establish and implement a strategic planning process for State government. The strategic planning process shall be designed to produce statewide goals, and State agencies shall develop agency goals and objectives that are consistent with those statewide goals. The Director, in conjunction with State agencies, shall prepare and apply performance measures and indicators of program impact, and shall require agency performance to be reviewed periodically to determine progress toward statewide goals and agency goals. Results of the strategic planning process and agency performance reviews shall be reflected in the budget document proposed by the Governor, as provided in G.S. 143-10.4.

The performance measures and indicators of program impact for each agency shall be based upon clear, unambiguous goals that are established by that agency. The Director shall be responsible for developing and implementing statewide comprehensive performance measures and indicators of program impact in a standardized format applicable across agency lines.

(b) If a member of the Council of State does not agree with the performance measures, departmental operations plans, and indicators of program impact developed in accordance with this section, G.S. 143-10.4, and G.S. 143-10.5, that apply to the member's department, the member of the Council of State shall submit to the Director of the Budget a statement of specific objections to the program measures and indicators of program impact. The Director of the Budget shall submit the statement to the General Assembly in accordance with G.S. 143-11(6). (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (a).

§ 143-10.4. Departmental operations plans.

The Director, through the Office of State Budget, Planning, and Management and in conjunction with State agencies, shall have prepared biennially in the even-numbered years, a comprehensive operations plan for each department, agency, and institution, for which the Director may recommend an appropriation of State funds in the next biennial period. The operations plans shall address the statewide and agency goals contained in the strategic plans developed in accordance with G.S. 143-10.3. The operations plans shall provide objectives, activities, and supporting statistics for the current biennium and for the following three biennial periods. The operations plans shall also provide clear, unambiguous performance measures and outcome indicators, which measures and indicators shall be used for program evaluation and shall be reported in the Governor's biennial budget submission.

The Director shall provide unified planning and budgeting instructions to the departments, agencies, and institutions for use in developing operations plans and biennial budgets. (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

§ 143-10.5. Development of performance measures for major programs.

(a) The Director of the Budget, through the Office of State Budget, Planning, and Management and through State agencies, departments, and institutions, shall develop performance measures for the major programs for each State agency, department, and institution. These performance measures shall be developed as part of the biennial comprehensive plan and shall serve as the basis for the development of the biennial budget, beginning with the 1995-97 fiscal biennium.

(b) The Director shall institute a standard process for developing program performance measures and for evaluating performance results, uniform performance measurement terms, and a standardized format for presentation.

(c) The program performance measurement system shall include:

(1) A description of the key performance measures for the program. The performance measures should include: program efficiency or unit cost, outputs or program activity, and outcomes or performance results, with emphasis on the use of program outcome measures.

(2) Identification and description of the current level of performance.

(3) Targets for the desired level of performance.

(4) Identification of future performance measures that should be developed and a time frame for development.

(5) A methodology for regular monitoring of departmental, agency, and institutional performance in relation to the measure.

(6) A methodology for assessing programs that have achieved the desired performance targets through innovative management actions.

(d) The Director of the Budget shall prepare a comprehensive plan for the implementation of a performance measurement system and shall present the plan to the General Assembly at the same time the 1995-97 fiscal biennium budget is submitted to the General Assembly. With regard to programs for which it is anticipated that performance measures will not be fully developed by that date, the Director of the Budget shall submit to the General Assembly at that time, a plan and timetable for the development and implementation of performance measures. In developing the plan, consideration shall be given to any recommendations and reports of the Governmental Accounting Standards Board. In the event the Director shall conclude that it is not feasible to develop performance measures for particular programs, the Director shall set forth detailed reasons for the conclusion in the report.

(e) Beginning in 1996, the Director of the Budget shall report to the General Assembly no later than February 1 in odd-numbered years and no later than April 1 in even-numbered years on:

(1) The status of the development of the program performance measurement system.

(2) The programs that have not achieved the desired level of performance and the reasons performance targets were not achieved.

(3) The programs that have achieved performance targets through management innovation. (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (a).

§ 143-10.7. Review of department forms and reports.

The Director, through the Office of State Budget, Planning, and Management, shall review on three-year cycles all internal and external forms and reports in use by State departments and institutions to confirm whether these forms and reports continue to be needed. If, during the review process, it is determined that these forms and reports are no longer necessary, or that they duplicate other forms or reports either in whole or in part, the Director shall have these forms and reports modified or eliminated. All departments shall provide the Director with copies of all forms and reports used, together with any additional information necessary for the review of these reports. (1995, c. 324, s. 10.2; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

§ 143-11. Survey of departments.

(a) On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each line item of the proposed expenditures, the budget shall show in separate parallel columns:

(1) Proposed expenditures and receipts for each fiscal year of the biennium;
(2) The certified budget for the preceding fiscal year;
(3) The currently authorized budget for the preceding fiscal year;
(4) Actual expenditures and receipts for the most recent fiscal year for which actual expenditure information is available; and
(5) Proposed increases and decreases.

Revenue and expenditure information shall be no less specific than the two-digit level in the State Accounting System Chart of Accounts as prescribed by the State Controller. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital improvements.

(b) The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) State Controller reports including:

a. An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.

b. A statement of special funds.

(2a) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two fiscal years.

(3) A report on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year, the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.

(4) A statement showing the State Board of Education's request, in accordance with G.S. 115C-96, for sufficient funds to provide textbooks to public school students.

(5) A proposal for expenditure of the funds in the Repairs and Renovations Reserve Account, which is established in G.S. 143-15.3A. The Director shall consider the data from the Facilities Condition and Assessment Program in the Office of State Construction when establishing priorities for the proposed expenditure of these funds.

(6) Statements of the objections of members of the Council of State received pursuant to G.S. 143-10.3(b) to the performance measures, departmental operations plans, and indicators of program impact prepared in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5.

(7) A list of the budget requests of members of the Council of State that are not included in the proposed budget.

(8) An estimate of the equipment replacement costs within the Judicial Department for the period covered by that budget.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget. (1925, c. 89, s. 12; 1929, c. 100, s. 11; 1983, c. 717, s. 54; 1985 (Reg. Sess., 1986), c. 955, s. 62; c. 1024, ss. 11-13; 1989, c. 752, s. 49; 1991, c. 542, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 81(b); 1993, c. 321, s. 17.1(d); 1993 (Reg. Sess., 1994), c. 769, s. 11.1(d); 1995, c. 324, s. 10(a); 2000-67, s. 15.7.)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 15.7, effective July 1, 2000, added subdivision (b)(8).

§ 143-12.1. Vending facilities.

(a) The receipts from vending facilities operated by State agencies, institutions, departments, boards, and commissions are State funds. The payments received by a State agency, institution, department, board or commission by contract under which another party operates vending facilities and pays a sum to the State, whether computed as a percentage of gross or net receipts or gross or net profits, or as a fixed or variable fee, are State funds.

(b) The receipts or payments described in subsection (a) of this section from vending facilities shall be deposited as provided by law in the appropriate fund to be determined by the Office of State Budget, Planning, and Management.

(c) The net proceeds from vending facilities are subject to appropriation by the General Assembly.

(d) The Office of State Budget, Planning, and Management shall submit to the General Assembly along with or as a part of the biennial budget (and along with or as a part of any second-year budget requests) budgets for vending facilities operated by General Fund, Highway Fund, and Wildlife Fund departments' and institutions' operating budgets.

(e) Budgets for vending facilities prepared under subsection (d) of this section shall reflect total receipts from the facilities, and the total costs to staff, stock, and operate the vending facilities, shall set out the total net proceeds, and shall contain, in line-item detail, requests the departments and institutions have submitted to expend the net proceeds. If a State agency or institution receives payments on account of vending facilities but does not actually operate the facilities, the budget shall contain a statement of the payments and shall contain, in line-item detail, requests the departments and institutions have submitted to expend the net proceeds.

(f) The net proceeds that the General Assembly approves for expenditure by the department or institution shall be retained in the appropriate fund budget code for the purposes approved by the General Assembly.

(f1) The net proceeds of the vending operations at the University of North Carolina Hospitals at Chapel Hill shall be used at the beginning of each fiscal year to cover any deficits incurred by the Hospital's cafeteria operation during the prior fiscal year. The amount transferred from the net proceeds of the vending operations may not be available for expenditure but shall revert to the General Fund at the end of the fiscal year.

(g) For the purposes of this section "vending facilities" has the same meaning as provided in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means.

(h) The provisions of subsections (c) through (f1) of this section shall not supersede or apply to operations under the provisions of Article 3 of Chapter 111 of the General Statutes, G.S. 127A-138(b), or G.S. 116-36.1 through G.S. 116-36.2, or to the operation of any vending facility by a community college or local school administrative unit, but they shall apply to the operations of the University of North Carolina Hospitals at Chapel Hill. (1983 (Reg. Sess., 1984), c. 1034, s. 166; 1985, c. 479, s. 77; 1987, c. 564, s. 25; c. 738, s. 233(a); 1989, c. 141, s. 17; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsections (b) and (d).

§ 143-15.2. (Effective June 30, 2001) Use of General Fund credit balance; priority uses.

(a) As used in G.S. 143-15.3, 143-15.3A, and 143-15.3B, the term "unreserved credit balance" means the credit balance amount, as determined on a cash basis, before funds are reserved by the State Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to G.S. 143-15.3 and G.S. 143-15.3A.

(b) The State Controller shall transfer funds from the unreserved credit balance to the Savings Reserve Account in accordance with G.S. 143-15.3(a).

(c) The State Controller shall transfer funds from the unreserved credit balance to the Repairs and Renovation Reserve Account in accordance with G.S. 143-15.3A(a).

(d) Repealed by Session Laws 2000, ch. 67, s. 7.7(e), effective June 30, 2001.

(e) The General Assembly may appropriate that part of the anticipated General Fund credit balance not expected to be reserved only for capital improvements or other one-time expenditures. (1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 812, s. 7(a), (c); c. 993, s. 12; 1993, c. 321, s. 17.1(a); 1993 (Reg. Sess., 1994), c. 591, s. 5(a); 1995, c. 324, s. 5.2(a); 1996, 2nd Ex. Sess., c. 18, s. 7.1(a); 1997-443, s. 7.9(b); 2000-67, s. 7.7(e).)

For this section as in effect until June 30, 2001, see the main volume.

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7.7(e), effective June 30, 2001, rewrote subsection (a); and repealed former subsection (d), regarding the transfer of funds to the Clean Water Management Trust Fund.

§ 143-15.3. Use of General Fund credit balance; priority uses.

(a) **(Effective until June 30, 2001)** There is established a Savings Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Savings Reserve Account one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account contains funds equal to five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds, that were directly appropriated. In the event that the one-fourth exceeds the amount necessary to reach the five percent (5%) level, only funds necessary to reach that level shall be reserved. If there are insufficient funds in the unreserved credit balance for the Savings Reserve Account, the Repairs and Renovations Reserve Account, and the Clean Water Management Trust Fund, then the requirements of this section shall be complied with first, and any remaining funds shall be reserved to the Repairs and Renovations Reserve Account, in accordance with G.S. 143-15.3A, and the Clean Water Management Trust Fund, in accordance with G.S. 143-15.3B.

(a) **(Effective June 30, 2001)** There is established a Savings Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Savings Reserve Account one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account contains funds equal to five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds, that were directly appropriated. In the event that the one-fourth exceeds the amount necessary to reach the five percent (5%) level, only funds necessary to reach that level shall be reserved. If there

§ 143-15.3(a) is set out twice. See notes.

are insufficient funds in the unreserved credit balance for the Savings Reserve Account and the Repairs and Renovations Reserve Account, then the requirements of this section shall be complied with first, and any remaining funds shall be reserved to the Repairs and Renovations Reserve Account, in accordance with G.S. 143-15.3A.

(a1) If the balance in the Savings Reserve Account falls below the five percent (5%) level during a fiscal year, the State Controller shall, in accordance with subsection (a) of this section, reserve to the Savings Reserve Account for the following fiscal years up to one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account again equals the five percent (5%) level set out in subsection (a) of this section.

(b) The Director may not use funds in the Savings Reserve Account unless the use has been approved by an act of the General Assembly. (1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 812, s. 7(b), (c); c. 900, s. 11; c. 993, s. 13; 1993, c. 321, ss. 17.1(c), 21.2; 1993 (Reg. Sess., 1994), c. 591, s. 5(b); c. 769, s. 7.27(b); 1997-443, s. 7.9(c); 2000-67, s. 7.7(f).)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until June 30, 2001. The second version of subsection (a) set out above is effective June 30, 2001.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7.7(f), in subsection (a), substituted "Savings Reserve Account and the Repairs and Renovations Reserve Account" for "Savings Reserve Account, the Repairs and Renovations Reserve Account, and the Clean Water Management Trust Fund," and deleted "and the Clean Water Management Trust Fund, in accordance with G.S. 143-15.3B" following "G.S. 143-15.3A."

§ 143-15.3A. Repairs and Renovations Reserve Account.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 27.2, effective July 1, 2000, directs that, of the funds in the Reserve for Repairs and Renovations for the 2000-2001 fiscal year, 46% are to be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations as approved by the Board of Governors, and 54% are to be allocated to the Office of State Budget and Management (now the Office of State Budget, Planning, and Management) for repairs and renovations pursuant to G.S. 143-15.3A. Notwithstanding G.S. 143-15.3A, the Board may allocate funds for repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. The Board of Governors and Office of State Budget and Management (now the Office of State Budget, Planning, and Management) are to submit the proposed allocations and any subsequent changes to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143-15.3B. The Clean Water Management Trust Fund.

(a) **(Effective until July 1, 2001)** The Clean Water Management Trust Fund is established in G.S. 113-145.3. The State Controller shall reserve to the Clean Water Management Trust Fund six and one-half percent (6.5%) of any unreserved credit balance remaining in the General Fund at the end of each fiscal year or thirty million dollars ($30,000,000), whichever is greater.

(a) **(Effective July 1, 2001 until July 1, 2002)** The Clean Water Management Trust Fund is established in G.S. 113-145.3. The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted, it is imperative that the State provide a minimum of forty million dollars ($40,000,000) each calendar year to the Clean Water Management Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of forty million dollars ($40,000,000).

(a) **(Effective July 1, 2002 until July 1, 2003)** The Clean Water Management Trust Fund is established in G.S. 113-145.3. The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted, it is imperative that the State provide a minimum of seventy million dollars ($70,000,000) each calendar year to the Clean Water Management Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of seventy million dollars ($70,000,000).

(a) **(Effective July 1, 2003)** The Clean Water Management Trust Fund is established in G.S. 113-145.3. The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted, it is imperative that the State provide a minimum of one hundred million dollars ($100,000,000) each calendar year to the Clean Water Management Management Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of one hundred million dollars ($100,000,000).

(b) The funds in the Clean Water Management Trust Fund shall be used only in accordance with Article 13A of Chapter 113 of the General Statutes. (1996, 2nd Ex. Sess., c. 18, s. 27.6(b); 1997-443, s. 7.9(a); 2000-67, ss. 7.7(b)-(d).)

Subsection (a) is set out four times. See notes. — The first version of subsection (a) set out above is effective until July 1, 2001. The second version of subsection (a) set out above is effective July 1, 2001 until July 1, 2002. The third version of subsection (a) set out above is effective July 1, 2002 until July 1, 2003. The fourth version of subsection (a) set out above is effective July 1, 2003.

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

The version of subsection (a) effective July 1, 2003, has been set out in the form above at the direction of the Revisor of Statutes. Session Laws 2000-67, s. 7.7(d) apparently inadvertently inserted an extra "Management" in that subsection.

Effect of Amendments. — Session Laws 2000-67, s. 7.7(b), effective July 1, 2001, deleted the second sentence "The State Controller shall reserve to the Clean Water Management Trust Fund six and one-half percent (6.5%) of any unreserved credit balance remaining in the General Fund at the end of each fiscal year or thirty million dollars ($30,000,000), whichever is greater" and added the present second sentence in subsection (a).

Session Laws 2000-67, s. 7.7(c), effective July 1, 2002, substituted "seventy million dollars ($70,000,000)" for "forty million dollars ($40,000,000)" in subsection (a).

Session Laws 2000-67, s. 7.7(d), effective July 1, 2003, in subsection (a), substituted "one hundred million dollars ($100,000,000)" for "seventy million dollars ($70,000,000)" and added "Management" after "Clean Water" in the second sentence.

§ 143-15.4. General Fund operating budget size limited.

(a) Size Limitation. Except as otherwise provided in this section, the General Fund operating budget each fiscal year shall not be greater than seven percent (7%) of the projected total State personal income for that fiscal year. For the purpose of this section, the General Fund operating budget includes any appropriations for local tax-sharing, but does not include appropriations for (i) capital expenditures or (ii) one-time expenditures due to natural disasters, federal mandates, or other emergencies.

(b) Increase in Size Limitation. To the extent that any percent increase in appropriations for a fiscal year for (i) Medicaid, (ii) operation of prisons, or (iii) the costs of providing health insurance for teachers and State employees, exceeds the percent increase in State personal income growth for the same period, the limitation on the size of the General Fund operating budget provided in subsection (a) of this section for that fiscal year shall be increased by the dollar amount represented by the excess percentage. For all subsequent fiscal years, the percent limitation contained in subsection (a) shall then be increased to reflect that dollar adjustment.

(c) Fiscal Reports. The Office of State Budget, Planning, and Management and the Fiscal Research Division of the General Assembly shall each submit a tentative estimate of total State personal income for the upcoming fiscal year to the General Assembly no later than February 1 of each year. The Office and the Fiscal Research Division shall each submit a final projection of total State personal income for the upcoming fiscal year to the General Assembly no later than May 1 of each year. The General Assembly shall use the lower of the two final projections to calculate the limitation on the size of the General Fund operating budget provided in this section. (1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 993, s. 14; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (c).

§ 143-16.4. Settlement Reserve Fund.

(a) The "Settlement Reserve Fund" is established as a restricted reserve in the General Fund. Except as otherwise provided in this section, funds shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(a1) A Health Trust Account is established in the Settlement Reserve Fund. The portion of each Master Settlement Agreement payment identified in Section 6(3) of S.L. 1999-2 shall be credited to the Health Trust Account. The State Controller shall transfer all funds in the Health Trust Account to the Health and Wellness Trust Fund created in Article 6C of Chapter 147 of the General Statutes.

(a2) A Tobacco Trust Account is established in the Settlement Reserve Fund. The portion of each Master Settlement Agreement payment identified in Section 6(2) of S.L. 1999-2 shall be credited to the Tobacco Trust Account. The State Controller shall transfer all funds in the Tobacco Trust Account to the Tobacco Trust Fund created in Article 75 of Chapter 143 of the General Statutes.

(b) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement or final order or judgment of the court, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement, or a final order or judgment of a court in litigation between tobacco companies and the states, shall be credited to the Settlement Reserve Fund. (1998-191, s. 2; 2000-147, s. 1.)

Editor's Note. —
Session Laws 2000-147, s. 8(a)-(c), provides:
"(a) Interpretation of Act.--The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

"(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

"(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-147, s. 8(d), contains a severability clause.

Effect of Amendments. — Session Laws 2000-147, s. 1, effective August 2, 2000, inserted "Except as otherwise provided in this section" in subsection (a); and added subsections (a1) and (a2); and made a stylistic change.

§ 143-19. Help for Director.

The Director is hereby authorized to secure such special help, expert accountants, draftsmen and clerical help as he may deem necessary to carry out his duties under this Article; and shall fix the compensation of all persons employed under this Article; which shall be paid by the State Treasurer upon the warrant of the State Controller. A statement in detail of all persons employed, time employed, compensation paid, and itemized statement of all other expenditures made under the terms of this Article, shall be reported to the General Assembly by the Director, and all payments made under this Article shall be charged against and paid out of the emergency contingent fund and/or such appropriations as may be made for the use of the Office of State Budget, Planning, and Management. (1925, c. 89, s. 20; 1929, c. 100, s. 21; 1957, c. 269, s. 2; 1961, c. 1181, s. 2; 1979, 2nd Sess., c. 1137, s. 37; 1985 (Reg. Sess., 1986), c. 1024, s. 15; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in this section.

§ 143-20.1. Annual financial statements.

Every fiscal year, all State agencies and component units of the State, as defined by generally accepted accounting principles, shall prepare annual financial statements on all funds administered by them no later than 60 days after the end of the State's fiscal year then ended in accordance with generally accepted accounting principles as described in authoritative pronouncements and interpreted or prescribed by the State Controller, and in the form required by the State Controller. The State Controller shall publish guidelines specifying the procedures to implement the necessary records, procedures, and accounting systems to reflect these statements on the proper basis of accounting.

Accordingly, the State Controller shall combine the financial statements for the various agencies into a Comprehensive Annual Financial Report for the State of North Carolina in accordance with generally accepted accounting principles. These statements, along with the opinion of the State Auditor, shall be published as the official financial statements of the State and shall be distributed to the Governor, the Office of State Budget, Planning, and Management, members of the General Assembly, heads of departments, agencies, and institutions of the State, and other interested parties. The State Controller shall notify the Director of the Budget of any State agencies and component units of the State, as defined by generally accepted accounting principles, that have not complied fully with the requirements of this section within the specified time, and the Director of the Budget shall employ whatever means necessary, including the withholding of allotments, to ensure immediate corrective actions. (1983, c. 913, s. 32; 1985 (Reg. Sess., 1986), c. 1024, ss. 17-19; 2000-67, s. 7(a); 2000-140, s. 93.1(a).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7(a), effective July 1, 2000, rewrote the first sentence in the first paragraph; in the second paragraph, in the second sentence, substituted "of any State agencies and component units of the State, as defined by generally accepted accounting principles, that have not complied" for "of any and all State agencies which have not complied," and substituted "section" for "provision"; and made stylistic changes.

Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in this section.

§ 143-23. All maintenance funds for itemized purposes; transfers between objects or line items.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 9.3, effective July 1, 2000, provides that, notwithstanding G.S. 143-23 or any other provision of law, the State Board of Community Colleges may transfer funds within the budget of the Community Colleges System Office to the extent necessary to implement the departmental reorganization plan recommended by the President of the North Carolina Community College System and adopted by the State Board in September 1999. The Board is to issue a report on the implementation of this section as specified within 30 days of completion of the budget realignment.

Session Laws 2000-67, s. 27.1(c), effective July 1, 2000, provides that, notwithstanding G.S. 143-23, if additional federal funds that require a State match are received for water resources projects or for beach renourishment projects for the 2000-2001 fiscal year, the Director of the Budget may, after consultation with the Joint Legislative Commission on Governmental Operations, transfer funds from General Fund appropriations to match federal funds.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143-23.2. Transfers to Department of Health and Human Services.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 1999-237, s. 11.10(a), as amended by Session Laws 2000-67, s. 11.7, provides that of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S.143-23.2, the sum of eighty-four million dollars ($84,000,000) for the 1999-2000 fiscal year and the sum of ninety-nine million dollars ($99,000,000) for the 2000-2001 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143-23.2(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual

provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.

All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs anticipated in the budget authorized by the General Assembly, of maintenance of such institutions, departments, and agencies; Provided, however, that if the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes, Highway Fund Codes, or Wildlife Fund Codes, the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget has consulted with the Joint Legislative Commission on Governmental Operations and unless the Director of the Budget finds that (i) the appropriations from that Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund and (ii) the funds may be expended in accordance with G.S. 143-23. Notwithstanding the foregoing provisions of this section, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations, to support the operations generating such receipts, as approved by the Director of the Budget.

The Office of State Budget, Planning, and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on expenditures of receipts in excess of the amounts certified in General Fund Codes, Highway Fund Codes, or Wildlife Fund Codes, that did not result in a corresponding reduced allotment from appropriations from that Fund. (1929, c. 100, s. 28; 1981 (Reg. Sess., 1982), c. 1282, s. 66; 1983, c. 761, s. 14; 1985, c. 479, ss. 156, 157; 1989 (Reg. Sess., 1990), c. 936, s. 5(a); 1996, 2nd Ex. Sess., c. 18, s. 7.4(h)(1), (2); 1997-256, s. 11; 1997-347, s. 7; 1997-401, s. 7; 1997-418, s. 6; 1997-443, s. 7.8(d); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in this section.

§ 143-28.1. Highway Fund appropriation.

Notwithstanding any other provisions of this Article, the appropriations made from the Highway Fund for highway construction and maintenance are subject to the following provisions.

(1) Cash Flow Funding for Highway Construction and Maintenance. — Highway maintenance and construction funds shall be budgeted, expended and accounted for on a "cash flow" basis. Pursuant to this

end, highway maintenance and construction contracts shall be planned and limited so payments due at any time will not exceed the cash available to pay them.

(2) Appropriations are for Payments and Contract Commitments to be Made in the Appropriation Fiscal Year. — The appropriations provided for by the Appropriations Act for highway maintenance and construction are for maximum payments estimated to be made during the appropriation fiscal year and for maximum contracting authority for future years. Highway maintenance and construction contracts shall be scheduled so that the total contract payments and other expenditures charged to projects in the fiscal year for each highway maintenance and construction appropriation item will not exceed the current appropriations provided by the General Assembly and unspent prior appropriations made by the General Assembly for the particular appropriation item.

(3) Payments Subject to Availability of Funds — Retainage Fully Funded — 5% Cash Balance Required. — The annual appropriations for highway maintenance and construction provided for by the Appropriations Act shall be expended only to the extent that sufficient funds are available in the Highway Fund. The Department of Transportation shall fully fund retainage from maintenance and construction contracts in the year in which the work is performed, and in addition shall maintain an available cash balance at the end of each month equal to at least five percent (5%) of the unpaid balance of the total maintenance and construction contract obligations. In the event this cash position is not maintained, no further construction and maintenance contract commitments shall be entered into until the cash balance has been regained. For the purposes of awarding contracts involving federal-aid, any amount due from the federal government and the Highway Bond Fund as a result of unreimbursed expenditures may be considered as cash for the purposes of this provision.

(4) Anticipation of Revenues. — In awarding State highway construction and maintenance contracts requiring payments beyond a biennium, the Director of the Budget may anticipate revenues as authorized and certified by the General Assembly, to continue contract payments for up to seventy-five percent (75%) of the revenues which are estimated for the first fiscal year of the succeeding biennium and which are not required for other budget items. Up to fifty percent (50%) of the revenues not required for other budget items may be anticipated for the second fiscal year of the succeeding biennium's contract payments. Up to forty percent (40%) of the revenues not required for other budget items may be anticipated for the first year of the second succeeding biennium and up to twenty percent (20%) of the revenues not required for other budget items may be anticipated for the second year of the second succeeding biennium.

(5) Amounts Obligated — Payments Subject to the Availability of Funds — Termination of Contracts. — Highway maintenance and construction appropriations may be obligated in the amount of allotments made to the Department of Transportation by the Office of State Budget, Planning, and Management for the estimated payments for maintenance and construction contract work to be performed in the appropriation fiscal year. The allotments shall be multi-year allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in subdivision (2) above. Payment for highway maintenance and construction work performed pursuant to contract in any fiscal year other than the

current fiscal year will be subject to appropriations by the General Assembly. Highway maintenance and construction contracts shall contain a schedule of estimated completion progress and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any highway maintenance or construction contract and any highway maintenance or construction contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

(6) Provision Incorporated in Contracts. — The provisions of subdivision (5) of this section shall be incorporated verbatim in all highway construction and maintenance contracts.

(7) Existing Contracts Are Not Affected. — The provisions of this section shall not apply to highway construction and maintenance contracts awarded by the Department of Transportation prior to July 15, 1980. (1979, 2nd Sess., c. 1137, s. 62; 1981, c. 859, s. 9; 1996, 2nd Ex. Sess., c. 18, s. 19.4(b); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subdivision (5).

§ 143-31.1. Study and review of plans and specifications for building, improvement, etc., projects.

It shall be the duty and responsibility of the Director of the Budget to determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectural features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications, and until economic conditions of the construction industry are considered by the Office of State Budget, Planning, and Management to be favorable to the letting of construction contracts. The Director of the Budget may, when he considers it in the best interest of the State to do so, terminate design contracts when it is documented that the designer has failed to perform the conditions enumerated in the contract.

Notwithstanding G.S. 143-135, the Director of the Budget may authorize the Department of Health and Human Services and the Department of Correction to use funds necessary for projects that correct deficiencies, improve living conditions, or renovate unneeded patient space for State office space. (1953, c. 1090; 1963, c. 423; 1975, c. 879, s. 46; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 860, s. 12; 1983 (Reg. Sess., 1984), c. 1116, s. 95; 1997-443, s. 11A.118(a); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in the first paragraph.

§ 143-31.4. Non-State match restrictions.

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 1999-237, s. 17.3, as amended by Session Laws 2000-67, s. 15(a), provides that all community mediation centers currently receiving State funds shall report annually to the Mediation Network of North Carolina on the program's funding and activities. This information shall be summarized by the Mediation Network and provided to the Chairs of the House and Senate Appropriations Committees and Subcommittees on Justice and Public Safety by February 1 of each year. Each community mediation center receiving State funds is to document that a specified graduated percentage of funding is coming from non-State sources. The provisions of G.S. 143-31.4 do not apply to community mediation centers receiving State funds.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143-34.2. Information as to requests for nonstate funds for projects imposing obligation on State; statement of participation in contracts, etc., for nonstate funds; limiting clause required in certain contracts or grants.

All State agencies, funds, or state-supported institutions shall submit to the Office of State Budget, Planning, and Management, as of the original date thereof, copies of all applications and requests for nonstate funds, (including federal funds), to be used for any purpose to which this section is applicable. This section shall be applicable to all projects and programs which do or may impose upon the State of North Carolina any substantial financial obligation at the time of or subsequent to the acceptance of any funds received upon any such application or request. Every State agency, fund or state-supported institution seeking nonstate funds for any such project or program shall furnish to the Office of State Budget, Planning, and Management and the Advisory Budget Commission with each such copy of application or request, a statement of the purposes for which any such project or program is desired or advocated, the source and amount of funds to be granted or providend therefor, and a statement of the conditions, if any, upon which such funds are to be provided. Prior to approval of any such project or program, the Office of State Budget, Planning, and Management shall furnish to the Fiscal Research Division of the General Assembly a list of the projects or purposes and the current and future financial impact of those projects or purposes.

It shall be required of all State agencies, funds, or state-supported institutions, commissions or regional planning and development bodies to submit to the Office of State Budget, Planning and Management a statement of participation in any contract, agreement, plan or request for nonstate funds (including federal funds).

Any contract or grant entered into by a State board, commission, agency, department or institution for the operation of a new program by such State board, commission, agency, department or institution or for the enrichment of an ongoing program of such State board, commission, agency, department or institution shall include a limiting clause which specifically states that continuation of the contract or grant program with State appropriations beyond the current State fiscal year is subject to State funds being appropriated by the General Assembly specifically for that program.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget. (1965, c. 1181; 1969, c. 1210; 1977, c. 802, s. 15.25; 1979, 2nd Sess., c. 1137, ss. 37, 45; 1985 (Reg. Sess., 1986), c. 955, s. 78; 1997-443, s. 7(c); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" throughout this section.

Article 1B.

Capital Improvement Planning Act.

§ 143-34.41. Legislative intent; purpose.

(a) The General Assembly recognizes the need to establish a comprehensive process for capital improvement planning that is fully integrated with State financial planning and debt management.

(b) The capital improvement planning and budgeting process shall include the following elements:

(1) An inventory of facilities owned by State agencies.
(2) Criteria used to evaluate capital improvement needs.
(3) A six-year capital improvement needs inventory.
(4) A six-year capital improvement plan.

(c) The Office of State Budget, Planning, and Management has responsibility for management of the capital improvement planning process. The Director of the Budget may assign to any State agency or institution such duties and responsibilities as may in the Director's judgment be necessary to the successful administration of the capital improvement planning process. (1997-443, s. 34.9; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (c).

§ 143-34.43. Capital improvement needs criteria.

The Office of State Budget, Planning, and Management shall develop a weighted list of factors that may be used to evaluate the need for capital improvement projects. The list shall include all of the following:

(1) Preservation of existing facilities.
(2) Health and safety considerations.
(3) Operational efficiencies.
(4) Increased demand for governmental services. (1997-443, s. 34.9; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in this section.

§ 143-34.44. Agency capital improvement needs estimates.

(a) On or before September 1 of each even-numbered year, each State agency shall submit to the Office of State Budget, Planning, and Management and to the Division of Fiscal Research a six-year capital improvement needs estimate. This estimate shall describe the agency's anticipated capital needs for each year of the six-year planning period. Capital improvement needs estimates shall be shown in two parts.

(b) The first part of the capital improvement needs estimates shall include only requirements for repairs and renovations necessary to maintain the existing use of existing facilities. Each proposed repair and renovation expenditure shall be justified by reference to the Facilities Condition Assessment Program operated by the Office of State construction.

(c) The second part of the capital improvement needs estimates shall include only proposals for land acquisition and projects involving either construction of new facilities or rehabilitation of existing facilities to accommodate uses for which the existing facilities were not originally designed. Each project included in this part shall be justified by reference to the needs evaluation criteria established by the Office of State Budget, Planning, and Management pursuant to G.S. 143-34.8C. (1997-443, s. 34.9; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" throughout this section.

Article 3.

Purchases and Contracts.

§ 143-48.3. Electronic procurement.

(a) The Department of Administration and the Office of the State Controller, in conjunction with the Office of Information Technology Services (ITS), the Department of State Auditor, the Department of State Treasurer. The University of North Carolina General Administration, the community Colleges System Office, and the Department of Public Instruction shall collaborate to develop electronic or digital procurement standards.

(b) The Department of Administration, in conjunction with the Office of the State Controller and the Office of Information Technology Services may, upon request, provide to all State agencies, universities, local school administrative units, and the community colleges, training in the use of the electronic procurement system.

(c) The Office of Information Technology shall act as an Application Service Provider for an electronic procurement system and shall establish, manage, and operate this electronic procurement system and shall establish, manage, and operate, through State ownership or commercial leasing, in accordance with the requirements and operating standards developed by the Department of Administration, the Office of the State Controller, and ITS.

(d) Nothing in this section modifies existing law relating to procurement between The University of North Carolina, UNC Health Care, local school administrative units, community colleges, and the Department of Administration. (2000-67, s. 7.8; 2000-140, ss. 95(a), 95(b).)

Editor's Note. — Session Laws 2000-67, s. 7.8, enacted this section as § 143B-472.70, in a new Part 17, Electronic Procurement in Government, in Chapter 143B, Article 10. Session

Laws 2000-140, s. 95(a), recodified the section as § 143-48.3. Session Laws 2000-140, s. 95(b), repealed Part 17 of Chapter 143B, Article 10.

Session Laws 2000-67, s. 28.5, makes the section effective July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143-49. Powers and duties of Secretary.

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, including sources of supply of materials and supplies with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided.

(2) To establish and enforce specifications which shall apply to all supplies, materials and equipment to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

When the award of any contract for contractual services exceeding a cost of one hundred thousand dollars ($100,000) requires negotiation with prospective contractors, the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in negotiation for the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.

(5) To make provision for or to contract for all State printing, including all printing, binding, paper stock, recycled paper stock, supplies, and supplies with recycled content, or materials in connection with the same.

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are defined as "institutions" in G.S. 116-22(1), and to counties, cities, towns, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission.

(7) To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733; 1979, c. 759, s. 1; 1983, c. 717, ss. 60, 62; 1985 (Reg. Sess., 1986), c. 955, ss. 79-82; 1989, c. 408; 1991, c. 358, s. 1; 1993, c. 256, s. 1; 1995, c. 265, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 24.17; 1997-443, s. 11A.118(a); 1999-20, s. 1; 2000-67, s. 10.9(a).)

Editor's Note. —

Session Laws 2000-67, s. 10.9 (b), authorizes the Secretary of Administration to adopt temporary rules in accordance with Chapter 150B to implement § 143-49(6), as rewritten by the act.

Session Laws 1998-212, s. 20.3, as amended by Session Laws 1999-237, s. 24(a), and Session Laws 2000-67, s. 21.3, provides: "(a) Except as provided by this section, no State agency, community college, constituent institution of The University of North Carolina, or local school administrative unit may use procurement cards for the purchase of equipment or supplies before August 1, 2001.

"(b) The Secretary of Administration shall designate no more than 15 governmental entities to participate in a pilot program on the purchase of supplies and equipment by procurement card. Those designated shall represent a cross section of governmental entities and shall include at least one State agency, one community college, two constituent institutions of The University of North Carolina, and one local school administrative unit.

"(c) The Division of Purchase and Contract and the State Controller shall report to the Joint Legislative Commission on Governmental Operations and the Joint Appropriations Subcommittee on General Government on February 1, 1999, on this pilot program.

"The report shall include all of the following:

"(1) Estimates from the pilot program of:

"a. How many purchasing and accounts payable personnel hours could be saved or redirected or both as a result of the procurement card.

"b. The impact of the procurement card on accounting and budgeting records and on purchasing history records.

"(2) A discussion of the effect of the procurement card on the State's ability to track both:

"a. Out-of-state sales taxes.

"b. North Carolina State and local sales tax payments by county.

"(3) A discussion of any other costs and benefits of the procurement card.

"(d) This section does not affect contracts for procurement cards entered into prior to March 31, 1997."

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 10.9.(a), effective July 1, 2000, inserted "to private higher education institutions that are defined as 'institutions' in G.S. 116-22(1)" near the middle of subdivision (6).

Article 3B.

Energy Conservation in Public Facilities.

Part 1. Energy Policy and Life-Cycle Cost Analysis.

§ 143-64.12. Authority and duties of State agencies.

(a) The General Assembly authorizes and directs that State agencies shall carry out the construction and renovation of State facilities, under their jurisdiction in such a manner as to further the policy declared herein, insuring that life-cycle cost analyses and energy-conservation practices are considered and are employed whenever feasible and practicable.

(b) The Department of Administration shall, to the extent feasible and practicable, develop and implement policies, procedures, and standards to ensure that State purchasing practices improve energy efficiency and take the cost of the product over the economic life of the product into consideration. The Department of Administration shall adopt and implement Building Energy Design Guidelines. These guidelines shall include energy-use goals and standards, economic assumptions for life-cycle cost analysis, and other criteria on building systems and technologies. The Department of Administration shall modify the design criteria for construction and renovation of facilities to require that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15. The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility and that require no significant expenditure of funds. State departments, institutions, or agencies shall implement these recommendations. Where energy management equipment is proposed for State facilities, the maximum interchangeability and compatibility of equipment components shall be required.

The Department of Administration shall develop a comprehensive energy management program for State government. Each State agency shall develop and implement an energy management plan that is consistent with the State's comprehensive energy management program.

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4. (1975, c. 434, s. 3; 1993, c. 334, s. 4; 2000-140, s. 76(f).)

Effect of Amendments. — Session Laws 2000-140, s. 76(f), effective September 30, 2000, in subsection (b), substituted "Department of Administration" for "Department of Administration, in consultation with the Energy Division" twice in the first paragraph and substituted "Department of Administration" for "Energy Division" in the second paragraph.

§ 143-128. Requirements for certain building contracts.

Local Modification. — (As to Article 8) Cabarrus: 2000-85 (expires June 30, 2005); Surry: 2000-79, s. 1 (expires December 31, 2002); (as to article 8) city of Charlotte: 2000-26, s. 1. By virtue of Session Laws 2000-26, s. 4, city of Charlotte: 1993, c. 171, s. 1; c. 196, s. 1; 1999-99, s. 1, as amended by 1999-456, s. 46, should be stricken from the main volume. For additional local modifications to this section, see the main volume.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.

Local Modification. — Surry: 2000-79, s. 1 (expires December 31, 2002); city of Charlotte: 2000-26, s. 1; city of Monroe: 2000-35, s. 1; town of Newport: 2000-97, s. 4 (one-time exemption before February 1, 2001). By virtue of Session Laws 2000-26, s. 4, city of Bessemer City: 1987, c. 344; and city of Charlotte: 1993, c. 229, ss. 1, 2, should be stricken from the main volume. For additional local modifications to this section, see the main volume.

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

Local Modification. — Surry: 2000-79, s. 1 (expires December 31, 2002); city of Charlotte: 2000-26, s. 1. By virtue of Session Laws 2000-26, s. 4, city of Charlotte: 1987, c. 344, should be stricken from the main volume. For additional local modifications to this section, see the main volume.

§ 143-132. Minimum number of bids for public contracts.

Local Modification. — Surry: 2000-79, s. 1 (expires December 31, 2002). For additional local modifications to this section, see the main volume.

§ 143-135. Limitation of application of Article.

Local Modification. — City of Monroe: 2000-35, s. 1; town of Chapel Hill: 2000-97, s. 1. Town of Chapel Hill: 2000-97, s. 1. For additional local modifications to this section, see the main volume.

ARTICLE 9.

Building Code Council and Building Code.

§ 143-138. North Carolina State Building Code.

(a) Preparation and Adoption. — The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

The Council shall request the Office of State Budget, Planning, and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars ($80.00) or more per housing unit. The Council shall not take final action on a proposed Code change that has a substantial economic impact or that increases the cost of residential housing by eighty dollars ($80.00) or more per housing unit until at least 60 days after the fiscal note has been prepared. The change can become effective only in accordance with G.S. 143-138(d).

(b) Contents of the Code. — The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

(c) Standards to Be Followed in Adopting the Code. — All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed reasonably to those ends. Requirements of the Code shall conform to good engineering practice. The Council may use as guidance, but is not required to adopt, the requirements of the National Building Code of the American Insurance Association, formerly the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Life Safety Code and Fire Prevention Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the American Insurance Association for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the United States of America Standards Institute, formerly the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(d) Amendments of the Code. — The Building Code Council may revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code. Code revisions and amendments adopted by the Building Code Council on or after September 1, 1997, but prior to July 1, 1998, shall become effective January 1, 1999. Code revisions and amendments adopted by the

Building Code Council on or after July 1, 1998, but prior to July 1, 2001, shall become effective January 1, 2002. All future revisions and amendments shall be adopted prior to July 1 every three years after July 1, 2001, to become effective the first day of January of the following year. A revision or amendment may be made effective on an earlier date if determined by the Building Code Council to be necessary to address an imminent threat to the public's health, safety, or welfare.

Handbooks providing explanatory material on Code provisions shall be provided no later than January 1, 2000, and shall be updated with each triennial revision of the Code or, in the discretion of the Council, more frequently. The Department may charge a reasonable fee for the handbooks.

(e) Effect upon Local Codes. — The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434.

(f) Repealed by Session Laws 1989, c. 681, s. 3.

(g) Publication and Distribution of Code. — The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
Department of Juvenile Justice and Delinquency Prevention	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Clerk of the Superior Court	1 each
Department of Cultural Resources [State Library]	5
Supreme Court Library	2
Legislative Library	1
Schools	
All state-supported colleges and universities in the State of North Carolina	1 each
Local Officials	
Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public.

(h) Violations. — Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code, except for violations of occupancy limits established by either, shall be guilty of a Class 3 misdemeanor and shall upon conviction only be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. Violation of occupancy limits established pursuant to the North Carolina State Building Code shall be a Class 3 misdemeanor. Any violation incurred more than one year after another conviction for violation of the occupancy limits shall be treated as a first offense for purposes of establishing and imposing penalties.

(i) Section 1008 of Chapter X of Volume 1 of the North Carolina State Building Code, Title "Special Safety to Life Requirements Applicable to Existing High-Rise Buildings" as adopted by the North Carolina State Building Code Council on March 9, 1976, as ratified and adopted as follows:

SECTION 1008-SPECIAL SAFETY TO LIFE REQUIREMENTS APPLICABLE TO EXISTING HIGH-RISE BUILDINGS

1008 — GENERAL.

(a) Applicability. — Within a reasonable time, as fixed by "written order" of the building official, and except as otherwise provided in subsection (j) of this section every building the [then] existing, that qualifies for classification under Table 1008.1 shall be considered to be a high-rise building and shall be provided with safety to life facilities as hereinafter specified. All other buildings shall be considered as low-rise. NOTE: The requirements of Section 1008 shall be considered as minimum requirements to provide for reasonable safety to life requirements for existing buildings and where possible, the owner and designer should consider the provisions of Section 506 applicable to new high-rise buildings.

(b) Notification of Building Owner. — The Department of Insurance will send copies of amendments adopted to all local building officials with the suggestion that all local building officials transmit to applicable building owners in their jurisdiction copies of adopted amendments, within six months from the date the amendments are adopted, with the request that each building owner respond to the local building official how he plans to comply with these requirements within a reasonable time.

NOTE: Suggested reasonable time and procedures for owners to respond to the building official's request is as follows:

(1) The building owner shall, upon receipt of written request from the building official on compliance procedures within a reasonable time, submit an overall plan required by 1008(c) below within one year and within the time period specified in the approved overall plan, but not to exceed five years after the overall plan is approved, accomplish compliance with this section, as evidenced by completion of the work in accordance with approved working drawings and specifications and by issuance of a new Certificate of Compliance by the building official covering the work. Upon approval of building owner's overall plan, the building official shall issue a "written order", as per 1008(a) above, to comply with Section 1008 in accordance with the approved overall plan.

(2) The building official may permit time extensions beyond five years to accomplish compliance in accordance with the overall plan when the owner can show just cause for such extension of time at the time the overall plan is approved.

(3) The local building official shall send second request notices as per 1008(b) to building owners who have made no response to the request at the end of six months and a third request notice to no response building owners at the end of nine months.

(4) If the building owner makes no response to any of the three requests for information on how the owner plans to comply with Section 1008 within 12 months from the first request, the building official shall issue a "written order" to the building owner to provide his building with the safety to life facilities as required by this section and to submit an overall plan specified by (1) above within six months with the five-year time period starting on the date of the "written order".

(5) For purposes of this section, the Construction Section of the Division of Facility Services, Department of Health and Human Services, will notify all non-State owned I-Institutional buildings requiring licensure by the Division of Facility Services and coordinate compli-

ance requirements with the Department of Insurance and the local building official.

(c) Submission of Plans and Time Schedule for Completing Work. — Plans and specifications, but not necessarily working drawings covering the work necessary to bring the building into compliance with this section shall be submitted to the building official within a reasonable time. (See suggested time in NOTE of Section 1008(b) above). A time schedule for accomplishing the work, including the preparation of working drawings and specifications shall be included. Some of the work may require longer periods of time to accomplish than others, and this shall be reflected in the plan and schedule.

NOTE: Suggested Time Period For Compliance:

SUGGESTED TIME PERIOD FOR COMPLIANCE

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
Signs in Elevator Lobbies and Elevator Cabs	1008.2(h)	1008.3(h)	1008.4(h)	180 days
Emergency Evacuation Plan	1008(b)	NOTE:		180 days
Corridor Smoke Detectors (Includes alternative door closers)	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Manual Fire Alarm	1008.2(a)	1008.3(a)	1008.4(a)	1 year
Voice Communication System Required	1008.2(b)	1008.3(b)	1008.4(b)	2 years
Smoke Detectors Required	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Protection and Fire Stopping for Vertical Shafts	1008.2(f)	1008.3(f)	1008.4(f)	3 years
Special Exit Requirements-Number, Location and Illumination to be in accordance with Section 1007	1008.2(e)	1008.3(e)	1008.4(e)	3 years
Emergency Electrical Power Supply	1008.2(d)	1008.3(d)	1008.4(d)	4 years
Special Exit Facilities Required	1008.2(e)	1008.3(e)	1008.4(e)	5 years
Compartmentation for Institutional Buildings	1008.2(f)	1008.3(f)	1008.4(f)	5 years
Emergency Elevator Requirements	1008.2(h)	1008.3(h)	1008.4(h)	5 years
Central Alarm Facility Required		1008.3(i)	1008.4(i)	5 years
Areas of Refuge Required on Every Eighth Floor			1008.4(j)	5 years
Smoke Venting			1008.4(k)	5 years
Fire Protection of Electrical Conductors			1008.4(l)	5 years
Sprinkler System Required			1008.4(m)	5 years

(d) Building Official Notification of Department of Insurance. — The building official shall send copies of written notices he sends to building owners to the Engineering and Building Codes Division for their files and also shall file

an annual report by August 15th of each year covering the past fiscal year setting forth the work accomplished under the provisions of this section.

(e) Construction Changes and Design of Life Safety Equipment. — Plans and specifications which contain construction changes and design of life safety equipment requirements to comply with provisions of this section shall be prepared by a registered architect in accordance with provisions of Chapter 83A of the General Statutes or by a registered engineer in accordance with provisions of Chapter 89C of the General Statutes or by both an architect and engineer particularly qualified by training and experience for the type of work involved. Such plans and specifications shall be submitted to the Engineering and Building Codes Division of the Department of Insurance for approval. Plans and specifications for I-Institutional buildings licensed by the Division of Facility Services as noted in (b) above shall be submitted to the Construction Section of that Division for review and approval.

(f) Filing of Test Reports and Maintenance on Life Safety Equipment. — The engineer performing the design for the electrical and mechanical equipment, including sprinkler systems, must file the test results with the Engineering and Building Codes Division of the Department of Insurance, or to the agency designated by the Department of Insurance, that such systems have been tested to indicate that they function in accordance with the standards specified in this section and according to design criteria. These test results shall be a prerequisite for the Certificate of Compliance required by (b) above. Test results for I-Institutional shall be filed with the Construction Section, Division of Facility Services. It shall be the duty and responsibility of the owners of Class I, II and III buildings to maintain smoke detection, fire detection, fire control, smoke removal and venting as required by this section and similar emergency systems in proper operating condition at all times. Certification of full tests and inspections of all emergency systems shall be provided by the owner annually to the fire department.

(g) Applicability of Chapter X and Conflicts with Other Sections. — The requirements of this section shall be in addition to those of Sections 1001 through 1007; and in case of conflict, the requirements affording the higher degree of safety to life shall apply, as determined by the building official.

(h) Classes of Buildings and Occupancy Classifications. — Buildings shall be classified as Class I, II or III according to Table 1008.1. In the case of mixed occupancies, for this purpose, the classification shall be the most restrictive one resulting from the application of the most prevalent occupancies to Table 1008.1.

FOOTNOTE: Emergency Plan. — Owners, operators, tenants, administrators or managers of high-rise buildings should consult with the fire authority having jurisdiction and establish procedures which shall include but not necessarily be limited to the following:

(1) Assignment of a responsible person to work with the fire authority in the establishment, implementation and maintenance of the emergency pre-fire plan.
(2) Emergency plan procedures shall be supplied to all tenants and shall be posted conspicuously in each hotel guest room, each office area, and each schoolroom.
(3) Submission to the local fire authority of an annual renewal or amended emergency plan.
(4) Plan should be completed as soon as possible.

1008.1 — ALL EXISTING BUILDINGS SHALL BE CLASSIFIED AS CLASS I, II AND III ACCORDING TO TABLE 1008.1.

TABLE 1008.1

Scope

CLASS	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
CLASS I	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	60′ but less than 120′ above average grade or 6 but less than 12 stories above average grade.
	Group I-Institutional-Unrestrained	36′ but less than 60′ above average grade or 3 but less than 6 stories above average grade.
CLASS II	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	120′ but less than 250′ above average grade or 12 but less than 25 stories above average grade.
	Group I-Institutional-Unrestrained	60′ but less than 250′ above average grade or 6 but less than 25 stories above average grade.
CLASS III	Group R-Residential Group B-Business Group E-Educational Group I-Institutional Group A-Assembly Group H-Hazardous	250′ or 25 stories above average grade.

NOTE 1: The entire building shall comply with this section when the building has an occupied floor above the height specified, except that portions of the buildings which do not exceed the height specified are exempt from this section, subject to the following provisions:

(a) Low-rise portions of Class I buildings must be separated from high-rise portions by one-hour construction.

(b) Low-rise portions of Class II and III buildings must be separated from high-rise portions by two-hour construction.

(c) Any required exit from the high-rise portion which passes through the low-rise portions must be separated from the low-rise portion by the two-hour construction.

NOTE 2: The height described in Table 1008.1 shall be measured between the average grade outside the building and the finished floor of the top occupied story.

NOTE 3: Public parking decks meeting the requirements of Section 412.7 and less than 75 feet in height are exempt from the requirements of this section when there is no other occupancy above or below such deck.

NOTE 4: Special purpose equipment buildings, such as telephone equipment buildings housing the equipment only, with personnel occupant load limited to persons required to maintain the equipment may be exempt from any or all of these requirements at the discretion of the Engineering and Building Codes Division provided such special purpose equipment building is separated from other portions of the building by two-hour fire rated construction.

1008.2—REQUIREMENTS FOR EXISTING CLASS I BUILDINGS.

All Class I buildings shall be provided with the following:

(a) An approved manual fire alarm system, meeting the requirements of Section 1125 and applicable portions of NFPA 71, 72A, 72B, 72C or 72D, shall be provided unless the building is fully sprinklered or equipped with an approved automatic fire detection system connected to the fire department.

(b) All Class I buildings shall meet the requirements of Sections 1001-1007.

(c) Smoke Detectors Required. — At least one approved listed smoke detector tested in accordance with UL-167, capable of detecting visible and invisible particles of combustion shall be installed as follows:

(1) All buildings classified as institutional, residential and assembly occupancies shall be provided with listed smoke detectors in all required exit corridors spaced no further than 60′ on center or more than 15′ from any wall. Exterior corridors open to the outside are not required to comply with this requirement. If the corridor walls have one-hour fire resistance rating with all openings protected with 1-3/4 inch solid wood core or hollow metal door or equivalent and all corridor doors are equipped with approved self-closing devices, the smoke detectors in the corridor may be omitted. Detectors in corridors may be omitted when each dwelling unit is equipped with smoke detectors which activate the alarm system.

(2) In every mechanical equipment, boiler, electrical equipment, elevator equipment or similar room unless the room is sprinklered or the room is separated from other areas by two-hour fire resistance construction with all openings therein protected with approved fire dampers and Class B fire doors. (Approved listed fire (heat) detectors may be submitted for these rooms.)

(3) In the return air portion of every air conditioning and mechanical ventilation system that serves more than one floor.

(4) The activation of any detector shall activate the alarm system, and shall cause such other operations as required by this Code.

(5) The annunciator shall be located near the main entrance or in a central alarm and control facility.

NOTE 1: Limited area sprinklers may be supplied from the domestic water system provided the domestic water system is designed to support the design flow of the largest number of sprinklers in any one of the enclosed areas. When supplied by the domestic water system, the maximum number of sprinklers in any one enclosed room or area shall not exceed 20 sprinklers which must totally protect the room or area.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above.

(1) Emergency, exit and elevator cab lighting.

(2) Emergency illumination for corridors, stairs, etc.

(3) Emergency Alarms and Detection Systems. — Power supply for fire alarm and fire detection. Emergency power does not need to be connected to fire alarm or detection systems when they are equipped with their own emergency power supply from float or trickle charge battery in accordance with NFPA standards.

(e) Special Exit Requirements. — Exits and exitways shall meet the following requirements:

(1) Protection of Stairways Required. — All required exit stairways shall be enclosed with noncombustible one-hour fire rated construction with a minimum of 1¾ inch solid core wood door or hollow metal door or 20 minute UL listed doors as entrance thereto. (See Section 1007.5).

(2) Number and Location of Exits. — All required exit stairways shall meet the requirements of Section 1007 to provide for proper number and location and proper fire rated enclosures and illumination of and designation for means of egress.

(3) Exit Outlets. — Each required exit stair shall exit directly outside or through a separate one-hour fire rated corridor with no openings except the necessary openings to exit into the fire rated corridor and from the fire rated corridor and such openings shall be protected with 1¾ inch solid wood core or hollow metal door or equivalent unless the exit floor level and all floors below are equipped with an approved automatic sprinkler system meeting the requirements of NFPA No. 13.

(f) Smoke Compartments Required for I-Institutional Buildings. — Each occupied floor shall be divided into at least two compartments with each compartment containing not more than 30 institutional occupants. Such compartments shall be subdivided with one-half hour fire rated partitions which shall extend from outside wall to outside wall and from floor to and through any concealed space to the floor slab or roof above and meet the following requirements:

(1) Maximum area of any smoke compartment shall be not more than 22,500 square feet in area with both length and width limited to 150 feet.

(2) At least one smoke partition per floor regardless of building size forming two smoke zones of approximately equal size.

(3) All doors located in smoke partitions shall be properly gasketed to insure a substantial barrier to the passage of smoke and gases.

(4) All doors located in smoke partitions shall be no less than 1¾ inch thick solid core wood doors with UL, ¼ inch wire glass panel in metal frames. This glass panel shall be a minimum of 100 square inches and a maximum of 720 square inches.

(5) Every door located in a smoke partition shall be equipped with an automatic closer. Doors that are normally held in the open position shall be equipped with an electrical device that shall, upon actuation of the fire alarm or smoke detection system in an adjacent zone, close the doors in that smoke partition.

(6) Glass in all corridor walls shall be ¼″, UL approved, wire glass in metal frames in pieces not to exceed 1296 square inches.

(7) Doors to all patient rooms and treatment areas shall be a minimum of 1¾ inch solid core wood doors except in fully sprinklered buildings.

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible one-hour fire rated construction with shaft wall openings protected with 1¾ inch solid core wood door or hollow metal door. Vertical shafts (such as electrical wiring shafts) which have openings such as ventilated doors on each floor must be fire stopped at the floor slab level with noncombustible materials having a fire resistance rating not less than one hour to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shafts.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall openings do not need any additional protection.

(h) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. The required emergency sign shall be readable at all

times and shall be a minimum of 1/2″ high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

1008.3 — REQUIREMENTS FOR EXISTING CLASS II BUILDINGS.

All Class II buildings must meet the following requirements:

(a) Manual Fire Alarm. — Provide manual fire alarm system in accordance with Section 1008.2(a). In addition, buildings so equipped with sprinkler alarm system or automatic fire detection system must have at least one manual fire alarm station near an exit on each floor as a part of such sprinkler or automatic fire detection and alarm system. Such manual fire alarm systems shall report a fire by floor.

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective basis which can be heard clearly by all occupants in all exit stairways, elevators, elevator lobbies, corridors, assembly rooms and tenant spaces.

NOTE 1: This system shall function so that in the event of one circuit or speaker being damaged or out of service, the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(c) Smoke Detectors Required. — Smoke detectors are required as per Section 1008.2(c). The following are additional requirements:

(1) Storage rooms larger than 24 square feet or having a maximum dimension of over eight feet shall be provided with approved fire detectors or smoke detectors installed in an approved manner unless the room is sprinklered.

(2) The actuation of any detectors shall activate the fire alarm system.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above. Power supply shall furnish power for items listed in Section 1008.2(d) and the following:

(1) Pressurization Fans. — Fans to provide required pressurization, smoke venting or smoke control for stairways.

(2) Elevators. — The designated emergency elevator.

(e) Special Exit Facilities Required. — The following exit facilities are required:

(1) The special exit facilities required in 1008.2(e) are required. All required exit stairways shall be enclosed with noncombustible two-hour fire rated construction with a minimum of 1½ hour Class B-labeled doors as entrance thereto: (See Section 1007.5).

(2) Smoke-Free Stairways Required. — At least one stairway shall be a smoke free stairway in accordance with Section 1104.2 or at least one stairway shall be pressurized to between 0.15 inch and 0.35 inch water column pressure with all doors closed. Smoke-free stairs and pressurized stairs shall be identified with signs containing letters a minimum of ½ inch high containing the words "PRIMARY EXIT STAIRS" unless all stairs are smoke free or pressurized. Approved exterior stairways meeting the requirements of Chapter XI or ap-

proved existing fire escapes meeting the requirements of Chapter X with all openings within 10 feet protected with wire glass or other properly designed stairs protected to assure similar smoke-free vertical egress may be permitted. All required exit stairways shall also meet the requirements of Section 1008.2(e).

(3) If stairway doors are locked from the stairway side, keys shall be provided to unlock all stairway doors on every eighth floor leading into the remainder of the building and the key shall be located in a glass enclosure adjacent to the door at each floor level (which may sound an alarm when the glass is broken). When the key unlocks the door, the hardware shall be of the type that remains unlocked after the key is removed. Other means, approved by the building official may be approved to enable occupants and fire fighters to readily unlock stairway doors on every eighth floor that may be locked from the stairwell side. The requirements of this section may be eliminated in smoke-free stairs and pressurized stairs provided fire department access keys are provided in locations acceptable to the local fire authority.

(f) Compartmentation for I-Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible two-hour fire rated construction with Class B-labeled door except for elevator doors which shall be hollow metal or equivalent. All vertical shafts which are not so enclosed must be fire stopped at each floor slab with noncombustible materials having a fire resistance rating of not less than two hours to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shaft.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall opening do not need any additional protection.

(h) Emergency Elevator Requirements.

(1) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby, or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(2) Identification of Emergency Elevator. — At least one elevator shall be identified as the emergency elevator and shall serve all floor levels.

NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and shall be a minimum of ½ inch high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(i) Central Alarm Facility Required. — A central alarm facility accessible at all times to fire department personnel or attended 24 hours a day, shall be provided and shall contain the following:

(1) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(2) Public service telephone.

(3) Fire detection and alarm systems annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received. These signals shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(4) Master keys for access from all stairways to all floors.

(5) One-way voice emergency communications system controls.

1008.4 — REQUIREMENTS FOR EXISTING CLASS III BUILDINGS.

All Class III Buildings shall be provided with the following:

(a) Manual Fire Alarm System. — A manual fire alarm system meeting the requirements of Section 1008.3(a).

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective or general basis which can be heard clearly by all occupants in all elevators, elevator lobbies, corridors, and rooms or tenant spaces exceeding 1,000 sq. ft. in area.

NOTE 1: This system shall be designed so that in the event of one circuit or speaker being damaged or out of service the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(2) Two-way system for use by both fire fighters and occupants at every fifth level in stairways and in all elevators.

(3) Within the stairs at levels not equipped with two-way voice communications, signs indicating the location of the nearest two-way device shall be provided.

NOTE: The one-way and two-way voice communication systems may be combined.

(c) Smoke Detectors Required. — Approved listed smoke detectors shall be installed in accordance with Section 1008.3(c) and in addition, such detectors shall terminate at the central alarm and control facility and be so designed that it will indicate the fire floor or the zone on the fire floor.

(d) Emergency Electrical Power Supply. — Emergency electrical power supply meeting the requirements of Section 1008.3(d) to supply all emergency equipment required by Section 1008.3(d) shall be provided and in addition, provisions shall be made for automatic transfer to emergency power in not more than ten seconds for emergency illumination, emergency lighting and emergency communication systems. Provisions shall be provided to transfer power to a second designated elevator located in a separate shaft from the primary emergency elevator. Any standpipe or sprinkler system serving occupied floor areas 400 feet or more above grade shall be provided with on-site generated power or diesel driven pump.

(e) Special Exit Requirements. — All exits and exitways shall meet the requirements of Section 1008.3(e).

(f) Compartmentation of Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — Same as Class II buildings. See Section 1008.3(g).

(h) Emergency Elevator Requirements.

(1) Primary Emergency Elevator. — At least one elevator serving all floors shall be identified as the emergency elevator with identification signs both outside and inside the elevator and shall be provided with emergency power to meet the requirements of Section 1008.3(c).
NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(2) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.
NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and have a minimum of ½″ high block letters with the words: "IN CASE OF FIRE, UNLESS OTHERWISE INSTRUCTED, DO NOT USE THE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(4) Machine Room Protection. — When elevator equipment located above the hoistway is subject to damage from smoke particulate matter, cable slots entering the machine room shall be sleeved beneath the machine room floor to inhibit the passage of smoke into the machine room.

(5) Secondary Emergency Elevator. — At least one elevator located in separate shaft from the Primary Emergency Elevator shall be identified as the "Secondary Emergency Elevator" with identification signs both outside and inside the elevator. It will serve all occupied floors above 250 feet and shall have all the same facilities as the primary elevator and will be capable of being transferred to the emergency power system.
NOTE: Emergency power supply can be sized for nonsimultaneous use of the primary and secondary emergency elevators.

(i) Central Alarm and Control Facilities Required.

(1) A central alarm facility accessible at all times to Fire Department personnel or attended 24 hours a day, shall be provided. The facility shall be located on a completely sprinklered floor or shall be enclosed in two-hour fire resistive construction. Openings are permitted if protected by listed 1½ hour Class B-labeled closures or water curtain devices capable of a minimum discharge of three gpm per lineal foot of opening. The facility shall contain the following:

(i) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(ii) Public service telephone.

(iii) Direct communication to the control facility.
(iv) Controls for the voice communication systems.
(v) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received, those signals, shall be both audible and visual with a silence switch for the audible.
NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(2) A control facility (fire department command station) shall be provided at or near the fire department response point and shall contain the following:
(i) Elevator status indicator.
NOTE: Not required in buildings where there is a status indicator at the main elevator lobby.
(ii) Master keys for access from all stairways to all floors.
(iii) Controls for the two-way communication system.
(iv) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received.
(v) Direct communication to the central alarm facility.

(3) The central alarm and control facilities may be combined in a single approved location. If combined, the duplication of facilities and the direct communication system between the two may be deleted.

(j) Areas of Refuge Required. — Class III buildings shall be provided with a designated "area of refuge" at the 250 ft. level and on at least every eighth floor or fraction thereof above that level to be designed so that occupants above the 250 ft. level can enter at all times and be safely accommodated in floor areas meeting the following requirements unless the building is completely sprinklered:

(1) Identification and Size. — These areas of refuge shall be identified on the plans and in the building as necessary. The area of refuge shall provide not less than 3 sq. ft. per occupant for the total number of occupants served by the area based on the occupancy content calculated by Section 1105. A minimum of two percent (2%) of the number of occupants on each floor shall be assumed to be handicapped and no less than 16 sq. ft. per handicapped occupant shall be provided. Smoke proof stairways meeting the requirements of Section 1104.2 and pressurized stairways meeting the requirements of Section 1108.3(e)(2) may be used for ambulatory occupants at the rate of 3 sq. ft. of area of treads and landings per person, but in no case shall the stairs count for more than one-third of the total occupants. Doors leading to designated areas of refuge from stairways or other areas of the building shall not have locking hardware or shall be automatically unlocked upon receipt of any manual or automatic fire alarm signal.

(2) Pressurized. — The area of refuge shall be pressurized with 100% fresh air utilizing the maximum capacity of existing mechanical building air conditioning system without recirculation from other areas or other acceptable means of providing fresh air into the area.

(3) Fire Resistive Separation. — Walls, partitions, floor assemblies and roof assemblies separating the area of refuge from the remainder of the building shall be noncombustible and have a fire resistance rating of not less than one hour. Duct penetrations shall be protected as required for penetrations of shafts. Metallic piping and metallic conduit may penetrate or pass through the separation only if the openings around the piping or conduit are sealed on each side of the penetrations with impervious noncombustible materials to prevent

the transfer of smoke or combustion gases from one side of the separation to the other. The fire door serving as a horizontal exit between compartments shall be so installed, fitted and gasketed to provide a barrier to the passage of smoke.

(4) Access Corridors. — Any corridor leading to each designated area of refuge shall be protected as required by Sections 1104 and 702. The capacity of an access corridor leading to an area of refuge shall be based on 150 persons per unit width as defined in Section 1105.2. An access corridor may not be less than 44 inches in width. The width shall be determined by the occupant content of the most densely populated floor served. Corridors with one-hour fire resistive separation may be utilized for area of refuge at the rate of three sq. ft. per ambulatory occupant provided a minimum of one cubic ft. per minute of outside air per square foot of floor area is introduced by the air conditioning system.

(5) Penetrations. — The continuity of the fire resistance at the juncture of exterior walls and floors must be maintained.

(k) Smoke Venting. — Smoke venting shall be accomplished by one of the following methods in nonsprinklered buildings:

(1) In a nonsprinklered building, the heating, ventilating and air conditioning system shall be arranged to exhaust the floor of alarm origin at its maximum exhausting capacity without recirculating air from the floor of alarm origin to any other floor. The system may be arranged to accomplish this either automatically or manually. If the air conditioning system is also used to pressurize the areas of refuge, this function shall not be compromised by using the system for smoke removal.

(2) Venting facilities shall be provided at the rate of 20 square feet per 100 lineal feet or 10 square feet per 50 lineal feet of exterior wall in each story and distributed around the perimeter at not more than 50 or 100 foot intervals openable from within the fire floor. Such panels and their controls shall be clearly identified.

(3) Any combination of the above two methods or other approved designs which will produce equivalent results and which is acceptable to the building official.

(l) Fire Protection of Electrical Conductors. — New electrical conductors furnishing power for pressurization fans for stairways, power for emergency elevators and fire pumps required by Section 1008.4(d) shall be protected by a two-hour fire rated horizontal or vertical enclosure or structural element which does not contain any combustible materials. Such protection shall begin at the source of the electrical power and extend to the floor level on which the emergency equipment is located. It shall also extend to the emergency equipment to the extent that the construction of the building components on that floor permits. New electrical conductors in metal raceways located within a two-hour fire rated assembly without any combustible therein are exempt from this requirement.

(m) Automatic Sprinkler Systems Required.

(1) All areas which are classified as Group M-mercantile and Group H-hazardous shall be completely protected with an automatic sprinkler system.

(2) All areas used for commercial or institutional food preparation and storage facilities adjacent thereto shall be provided with an automatic sprinkler system.

(3) An area used for storage or handling of hazardous substances shall be provided with an automatic sprinkler system.

(4) All laboratories and vocational shops in Group E, Educational shall be provided with an automatic sprinkler system.

(5) Sprinkler systems shall be in strict accordance with NFPA No. 13 and the following requirements:
The sprinkler system must be equipped with a water flow and supervisory signal system that will transmit automatically a water flow signal directly to the fire department or to an independent signal monitoring service satisfactory to the fire department.

(j) Subsection (i) of this section does not apply to business occupancy buildings as defined in the North Carolina State Building Code except that evacuation plans as required on page 8, lines 2 through 16 [Section 1008, footnote following subsection (h)], and smoke detectors as required for Class I Buildings as required by Section 1008.2, page 11, lines 5 through 21 [Section 1008.2, subdivision (c)(1)]; Class II Buildings as required by Section 1008.3, page 17, lines 17 through 28 and page 18, lines 1 through 10 [Section 1008.3, subsections (c) and(d)]; and Class III Buildings, as required by Section 1008.4, lines 21 through 25 [Section 1008.4, subsection (c)] shall not be exempted from operation of this act as applied to business occupancy buildings, except that the Council shall adopt rules that allow a business occupancy building built prior to 1953 to have a single exit to remain if the building complies with the Building Code on or before December 31, 2006.

(j1) A nonbusiness occupancy building built prior to the adoption of the 1953 Building Code that is not in compliance with Section 402.1.3.5 of Volume IX of the Building Code or Section 3407.2.2 of Volume I of the Building Code must comply with the applicable sections by December 31, 2006.

(k) For purposes of use in the Code, the term "Family Care Home" shall mean an adult care home having two to six residents.

(*l*) When any question arises as to any provision of the Code, judicial notice shall be taken of that provision of the Code. (1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2; 1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5; 1981, c. 677, s. 3; c. 713, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2D; c. 1348, s. 1; 1983, c. 614, s. 3; 1985, c. 576, s. 1; c. 622, s. 2; c. 666, s. 39; 1989, c. 25, s. 2; c. 681, ss. 2, 3, 9, 10, 18, 19; c. 727, ss. 157, 158; 1991 (Reg. Sess., 1992), c. 895, s. 1; 1993, c. 329, ss. 1, 3; c. 539, s. 1009; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 111, s. 1; c. 242, s. 1; c. 507, s. 27.8(r); c. 535, s. 30; 1997-26, ss. 1-3, 5; 1997-443, ss. 11A.93, 11A.94, 11A.118(a), 11A.119(a); 1998-57, s. 2; 1998-172, s. 1; 1998-202, s. 4(u); 1999-456, s. 40; 2000-137, s. 4(x); 2000-140, s. 93.1(a).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(x), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in the table in subsection (g).

Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in the second paragraph of subsection (a).

§ 143-139. Enforcement of Building Code.

OPINIONS OF ATTORNEY GENERAL

This section is applicable to purchasers of electrical equipment. See opinion of Attorney General to The Honorable Constance K. Wilson Representative 57th District, 1998 N.C.A.G. 57 (12/22/98).

Article 9A.

North Carolina Manufactured Housing Board — Manufactured Home Warranties.

§ 143-143.11A. Notification of change of address, control of ownership, and bankruptcy.

(a) Every applicant for a license shall inform the Board of the applicant's business address. Every licensee shall give written notification to the Board of any change in the licensee's business address, for whatever reason, within 10 business days after the licensee moves to a new address or a change in the address takes place. A violation of this subsection shall not constitute grounds for revocation, suspension, or non-renewal of a license or for the imposition of any other penalty by the Board.

(b) Notwithstanding any other provision of law, whenever the Board is authorized or required to give notice to a licensee under this Article, the notice may be delivered personally to the licensee or sent by first-class mail to the licensee at the address provided to the Board under subsection (a) of this section. Notice shall be deemed given four days after mailing, and any Department employee may certify that notice has been given.

(c) Every person licensed under this Article, except for a person licensed as a manufactured home salesperson, shall give written notification to the Board of any change in ownership or control of the licensee's business within 30 business days after the change. A "change in ownership or control" means the sale or conveyance of the capital stock of the business or of an owner's interest in the business, which operates to place a person or group of persons, not previously in control of the business, in effective control of the business. A violation of this subsection shall not constitute grounds for revocation, suspension, or nonrenewal of a license or for the imposition of any other penalty by the Board.

(d) Upon the filing for protection under the United States Bankruptcy Code by any licensee, or by any business in which the licensee holds a position of employment, management or ownership, the licensee shall notify the Board of the filing of protection within three business days after the filing. Upon the appointment of a receiver by a court of this State for any licensee, or for any business in which the licensee holds a position of employment, management, or ownership the licensee shall notify the Board of the appointment within three business days after the appointment. (1999-393, s. 1; 2000-122, s. 9.)

Effect of Amendments. — Session Laws 2000-122, s. 9, effective September 1, 2000, substituted "control of ownership, and bankruptcy" for "service of notice" in the section heading; and added subsections (c) and (d).

§ 143-143.12. Bond required.

(a) A person licensed as a manufactured home salesperson shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent in the following amounts:

(1) For a manufacturer, two thousand dollars ($2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars ($100,000). When no manufactured homes were produced in the prior year, the amount required shall be based

on the estimated number of manufactured homes to be produced during the current year.

(2) For a dealer who has one place of business, the amount shall be thirty-five thousand dollars ($35,000).

(3) For a dealer who has more than one place of business, the amount shall be twenty-five thousand dollars ($25,000) for each additional place of business.

(4) For a set-up contractor, the amount shall be ten thousand dollars ($10,000).

(b) A corporate surety bond shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Article. A cash bond or fixed value equivalent shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year period, and a new bond or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Article may institute an action to recover against the licensee and the surety.

(d) The Board may adopt rules to assure satisfaction of claims. (1981, c. 952, s. 2; 1985, c. 487, s. 2; 1987, c. 429, s. 19; c. 827, s. 223; 1999-393, s. 1; 2000-122, s. 8.)

Effect of Amendments. —
Session Laws 2000-122, s. 8, effective September 1, 2000, in subdivision (a)(2), substituted "one place" for "four or less places" and substituted "thirty-five thousand dollars ($35,000)" for "twenty-five thousand dollars ($25,000)"; in subdivision (a)(3), substituted "one place" for "four places" and substituted "twenty-five thousand dollars ($25,000) for each additional place of business" for "fifty thousand dollars ($50,000)"; and substituted "ten thousand dollars ($10,000)" for "five thousand dollars ($5,000)" in subdivision (a)(4).

Article 9F.

North Carolina Home Inspector Licensure Board.

§ 143-151.57. Fees.

(a) Maximum Fees. — The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	Maximum Fee
Application for home inspector license	$25.00
Application for associate home inspector license	15.00
Home inspector examination	75.00
Issuance of home inspector license	150.00
Issuance of associate home inspector license	100.00
Late renewal of home inspector license	25.00
Late renewal of associate home inspector license	15.00
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per licensee	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing.

(b) Subsequent Application. — An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. (1993 (Reg. Sess., 1994), c. 724, s. 1; 1999-149, s. 2; 2000-140, s. 32.)

Effect of Amendments. — Session Laws 2000-140, s. 32, effective July 21, 2000, deleted "inspector" following "Late renewal of associate home inspector license" in the table in subsection (a).

Article 10.

Various Powers and Regulations.

§ 143-162.2. Use of public property by production companies.

If a State agency makes real property available to a production company for a production, it shall not charge any fee other than reimbursement of actual costs incurred and actual revenues lost by the agency. As used in this section, the term "production company" has the meaning provided in G.S. 105-164.3. This section does not require a State agency to make real property available to a production company for a production. (2000-153, s. 3.)

Editor's Note. — Session Laws 2000-153, s. 7, made this section effective August 2, 2000.

Article 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

§ 143-166.2. Definitions.

(a) The term "dependent child" shall mean any unmarried child of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol whether natural, adopted, posthumously born or whether an illegitimate child as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his chief support from said officer or fireman or rescue squad worker or senior member of the Civil Air Patrol at the time of his death; provided, however, that if a dependent child is entitled to receive benefits at the time of the officer's or fireman's or rescue squad worker's or senior Civil Air Patrol member's death as hereinafter provided, he shall continue to be eligible to receive such benefits regardless of his age thereafter; and further provided that any child over 18 years of age who is physically or mentally incapable of earning a living and any child over 18 years of age who was enrolled as a full-time student at the time of the officer's, the fireman's, the rescue squad worker's or the senior Civil Air Patrol member's death shall so long as he remains a full-time student as defined in the Social Security Act be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.

(b) The term "dependent parent" shall mean the parent of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the officer, fireman, rescue squad worker or senior member of the Civil Air Patrol at the time of the injury which resulted in his death.

(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties. When applied to a senior member of the Civil Air Patrol as defined in this Article, "killed in the line of duty" shall mean any such senior member of the North Carolina Wing-Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while engaged in a State requested and approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

(d) The term "law-enforcement officer," "officer," or "fireman" shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction and all full-time institutional and detention employees of the Department of Juvenile Justice and Delinquency Prevention. The term "firemen" shall mean both "eligible fireman"; or "fireman" as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a). The term "fireman" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties.

(e) The term "spouse" shall mean the wife or husband of the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member who survives him and who was residing with such officer, fireman, rescue squad worker, or senior Civil Air Patrol member at the time of and during the six months next preceding the date of injury to such officer, fireman, rescue squad worker or senior Civil Air Patrol member which resulted in his death and who also resided with such officer, fireman, rescue squad worker or senior Civil Air Patrol member from that date of injury up to and at the time of his death and who remains unmarried during the time benefits are forthcoming; provided, however, the part of this section requiring the spouse to have been residing with the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member for six months next preceding the date of the injury which resulted in his death shall not apply where marriage occurred during this six-month period or where the officer, fireman, rescue squad worker or senior Civil Air Patrol member was absent during this six-month period due to service in the armed forces of this country.

(f) The term "official duties" means those duties performed while en route to, engaged in, or returning from training, or in the course of responding to, engaged in or returning from a call by the department of which he is a member, or from a call for assistance from any department or such organization within the State of North Carolina or within a service area contiguous to the borders of the State of North Carolina, when served or aided by a department from within the State of North Carolina. While within the State of North Carolina, any eligible person, as defined in this section or in G.S. 58-86-25, who renders service or assistance, of his own volition, at the scene of an emergency, is performing his official duties when:

(1) Reasonably apparent circumstances require prompt decisions and actions to protect persons and property; and

(2) The necessity of immediate action is so reasonably apparent that any delay in acting would seriously worsen the property damage or endanger any person's life. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025; 1973, c. 634, s. 2; c. 955, ss. 1, 2; 1975, c. 19, s. 49; c. 284, s. 7; 1977, c. 1048; 1979, c. 516, ss. 2, 3; c. 869; 1981, c. 944, s. 1; 1983, c. 761, s. 237; 1987, c. 812; 1987 (Reg. Sess., 1988), c. 1050, s. 1; 1989, c. 727, s. 218(97); 1989 (Reg. Sess., 1990), c. 1024, s. 32; 1991 (Reg. Sess., 1992), c. 833, s. 5; 1997-443, ss. 11A.118(a), 11A.119(a); 2000-137, s. 4(y).)

Effect of Amendments. — Session Laws 2000-137, s. 4(y), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Division of Youth Services of the Department of Health and Human Services" in subsection (d).

Article 12B.

Salary Continuation Plan for Certain State Law-Enforcement Officers.

§ 143-166.19. Determination of cause and extent of incapacity; hearing before Industrial Commission; appeal; effect of refusal to perform duties.

CASE NOTES

Attorney's fees. — In a workers' compensation case involving a Department of Corrections officer's claim for salary continuation, the Industrial Commission could in its discretion award reasonable attorney's fees under this section. Ruggery v. North Carolina Dep't of Cors., 135 N.C. App. 270, 520 S.E.2d 77 (1999).

Article 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-214.24. Riparian Buffer Protection Program: Coordination with River Basin Associations.

(a) Prior to drafting temporary or permanent rules that require the preservation of riparian buffers in a river basin, the Department shall consult with major stakeholders who may have an interest in the proposed rules, including the board of directors or representatives designated by the board of directors of any river basin association in the affected river basin that meets all of the following criteria:

(1) The association is a nonprofit corporation, as defined by G.S. 55A-1-40.
(2) The association has as its primary purpose the conservation, preservation, and restoration of the environmental and natural resources of the river basin in which it is located.
(3) Membership in the association is open on a nondiscriminatory basis to all citizens in the river basin.
(4) The membership of the board of directors of the association includes at least one representative from each county with a significant portion of its territory in the river basin.
(5) The membership of the association includes significant representation from each of the following categories of persons:
 a. Elected local officials.
 b. Persons involved in agriculture.
 c. Persons involved in residential and commercial land development.
 d. Persons involved in forestry.
 e. Representatives of community-based organizations.
 f. Representatives of organizations that advocate for protection of the environment and conservation of natural resources.
 g. Persons with special training and scientific expertise in protection of water who are affiliated with colleges and universities.
 h. Private property owners.
 i. Persons with a general interest in water quality protection.

(b) The purpose of the consultation required by subsection (a) of this section is to assure that major stakeholders who may have an interest in the proposed rules have an opportunity to inform the Department of their concerns before the Department drafts the rules. (2000-172, s. 5.1.)

Editor's Note. — Session Laws 2000-172, s. 8.3, made this section effective August 2, 2000.

Session Laws 2000-172, s. 8.2, contains a severability clause.

§ 143-215.1. Control of sources of water pollution; permits required.

OPINIONS OF ATTORNEY GENERAL

Exception to Swine Farm Moratorium. — A swine waste operation general permit and the certificates of coverage issued under this section on the morning of August 27, 1997, were effective, and construction or expansion thereunder could proceed as a statutory exception to the swine farm moratorium signed by the Governor in the afternoon of August 27, 1997. See opinion of Attorney General to Mr. Preston Howard, Director Division of Water Quality Department of Environment and Natural Resources, 1997 N.C.A.G. 59 (9/22/97).

For a general discussion of the validity of three permit conditions, see opinion of Attorney General to Senator John H. Kerr, III, North Carolina General Assembly, 1998 N.C.A.G. 29 (6/7/98).

Part 1A. Animal Waste Management Systems.

§ 143-215.10A. Legislative findings and intent.

Legal Periodicals. — For note, "Hog Farms and Nuisance Law in Parker v. Barefoot: Has North Carolina Become a Hog Heaven and Waste Lagoon?" see 77 N.C. L. Rev. 2355 (1999).

OPINIONS OF ATTORNEY GENERAL

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Part 2A. Registration of Water Withdrawals and Transfers; Regulation of Surface Water Transfers.

§ 143-215.22G. Definitions.

Cross References. — As to establishment of a pilot program for the removal of abandoned vessels in the Neuse River Basin, see the editor's note at § 76-40.

Part 6. Floodplain Regulation.

§ 143-215.51. Purposes.

The purposes of this Part are to:

(1) Minimize the extent of floods by preventing obstructions that inhibit water flow and increase flood height and damage.

(2) Prevent and minimize loss of life, injuries, property damage, and other losses in flood hazard areas.

(3) Promote the public health, safety, and welfare of citizens of North Carolina in flood hazard areas. (1971, c. 1167, s. 3; 1973, c. 621, s. 5; 2000-150, s. 1.)

Editor's Note. — Session Laws 2000-150, s. 3, directs the Environmental Review Commission to study the need to increase minimum elevation requirements for structures that are located in floodplains, to increase the authority of the Secretary of Crime Control and Public Safety to enforce Part 6 of Article 21 of Chapter 143 of the General Statutes, as amended by Section 1 of the act, to increase protection against the potential recurrence of damage to public and private property that resulted from the hurricanes of 1999, and other measures to reduce the likelihood that public assistance will be needed in response to future hurricanes and other storm events, and to report its findings and recommendations, including any proposed legislation, to the 2001 General Assembly.

Session Laws 2000-150, s. 4, directs the Environmental Management Commission to study the impacts of development in the river basins of the State on the volume and intensity of stormwater flow and on the resulting intensity, frequency, and duration of flood events, specifically considering means to reduce or eliminate present and future impacts of development, and to report its findings and recommendations, including any proposed legislation, to the Environmental Review Commission no later than February 15, 2001.

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, substituted "Floodplain" for "Floodway" in the Part heading; substituted "Purposes" for "Preamble" in the catchline and rewrote the section.

§ 143-215.52. Definitions.

(a) As used in this Part:

(1) "Artificial obstruction" means any obstruction to the flow of water in a stream that is not a natural obstruction, including any that, while not a significant obstruction in itself, is capable of accumulating debris and thereby reducing the flood-carrying capacity of the stream.

(1a) "Base flood" or "100-year flood" means a flood that has a one percent (1%) chance of being equaled or exceeded in any given year. The term "base flood" is used in the National Flood Insurance Program to indicate the minimum level of flooding to be addressed by a community in its floodplain management regulations.

(1b) "Base floodplain" or "100-year floodplain" means that area subject to a one percent (1%) or greater chance of flooding in any given year, as shown on the current floodplain maps prepared pursuant to the National Flood Insurance Program or approved by the Department.

(1c) "Department" means the Department of Crime Control and Public Safety.

(1d) "Flood hazard area" means the area designated by a local government, pursuant to this Part, as an area where development must be regulated to prevent damage from flooding. The flood hazard area must include and may exceed the base floodplain.

(2) Repealed by Session Laws 2000, c. 150, s. 1, effective August 2, 2000.

(3) "Local government" means any county or city, as defined in G.S. 160A-1.

(3a) "Lowest floor", when used in reference to a structure, means the lowest enclosed area, including a basement, of the structure. An unfinished or flood resistant enclosed area, other than a basement, that is usable solely for parking vehicles, building access, or storage is not a lowest floor.

(4) "Natural obstruction" includes any rock, tree, gravel, or other natural matter that is an obstruction and has been located within the 100-year floodplain by a nonhuman cause.

(4b) "Secretary" means the Secretary of Crime Control and Public Safety.

(5) "Stream" means a watercourse that collects surface runoff from an area of one square mile or greater.

(6) "Structure" means a walled or roofed building, including a mobile home and a gas or liquid storage tank.

(b) As used in this Part, the terms "artificial obstruction" and "structure" do not include any of the following:

(1) An electric generation, distribution, or transmission facility.

(2) A gas pipeline or gas transmission or distribution facility, including a compressor station or related facility.

(3) A water treatment or distribution facility, including a pump station.

(4) A wastewater collection or treatment facility, including a lift station.

(5) Processing equipment used in connection with a mining operation. (1971, c. 1167, s. 3; 2000-150, s. 1.)

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, designated the existing introductory paragraph as present subsection (a) and added subdivisions (a)(1a), (1b), (1c), (1d), (3a), (4b) and (6); added subsection (b); deleted "unless the context otherwise requires" following "Part" in subsection (a); in subdivision (a)(1), substituted "to the flow of water in a stream that" for "which"; repealed subdivision (a)(2) regarding "Floodway"; substituted "city, as defined in G.S. 160A-1" for "municipal corporation" in subdivision (a)(3); in subdivision (a)(4), substituted "other natural matter" for "analogous natural matter" and substituted "100-year floodplain" for "floodway"; and deleted the last sentence in subdivision (a)(5), which read: "This does not include flooding due to tidal or storm surge on estuarine or ocean waters"; and made stylistic changes.

§ 143-215.53: Repealed by Session Laws 2000-150, s. 1, effective August 2, 2000.

§ 143-215.54. Regulation of flood hazard areas; prohibited uses.

(a) A local government may adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of flood hazard areas that are consistent with the requirements of this Part.

(b) The following uses may be made of flood hazard areas without a permit issued under this Part, provided that these uses comply with local land-use ordinances and any other applicable laws or regulations:

(1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, mining, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses;

(2) Ground level loading areas, parking areas, rotary aircraft ports and other similar ground level area uses;

(3) Lawns, gardens, play areas and other similar uses;

(4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses.

(5) Land application of waste at agronomic rates consistent with a permit issued under Part 1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or an approved animal waste management plan.

(6) Land application of septage consistent with a permit issued under G.S. 130A-291.1.

(c) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities are prohibited in the 100-year floodplain except as authorized under G.S. 143-215.54A(b). (1971, c. 1167, s. 3; 1973, c. 621, s. 8; 1979, c. 413, ss. 1, 2; 2000-150, s. 1.)

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, substituted "Regulation of flood hazard areas; prohibited uses" for "Floodway uses" in the catchline; in subsection (a), substituted "A local government may adopt ordinances to regulate uses in flood hazard areas and" for "Local governments are empowered to," substituted "flood hazard areas that are" for "the floodways" and substituted "requirements of this Part" for "purposes of this Part and for purposes which the State does not regulate either by a permit or a formal approval system"; in subsection (b), substituted "flood hazard areas" for "floodways as a matter of right" and added "provided that these ... laws or regulations"; inserted "mining" in subdivision (b)(1); added subdivisions (b)(5) and (6); and added subsection (c).

§ 143-215.54A. Minimum standards for ordinances; variances for prohibited uses.

(a) A flood hazard prevention ordinance adopted by a county or city pursuant to this Part shall, at a minimum:

(1) Meet the requirements for participation in the National Flood Insurance Program and of this section.

(2) Prohibit new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain except as authorized under subsection (b) of this section.

(3) Provide that a structure or tank for chemical or fuel storage incidental to a use that is allowed under this section or to the operation of a water treatment plant or wastewater treatment facility may be located in a 100-year floodplain only if the structure or tank is either elevated above base flood elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(b) A flood hazard prevention ordinance may include a procedure for granting variances for uses prohibited under G.S. 143-215.54(c). A county or city shall notify the Secretary of its intention to grant a variance at least 30 days prior to granting the variance. A county or city may grant a variance upon finding that all of the following apply:

(1) The use serves a critical need in the community.

(2) No feasible location exists for the location of the use outside the 100-year floodplain.

(3) The lowest floor of any structure is elevated above the base flood elevation or is designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(4) The use complies with all other applicable laws and regulations. (2000-150, s. 1.)

Editor's Note. — Session Laws 2000-150, s. 5, made this section effective August 2, 2000.

§ 143-215.55. Acquisition of existing structures.

A local government may acquire, by purchase, exchange, or condemnation an existing structure located in a flood hazard area in the area regulated by the local government if the local government determines that the acquisition is necessary to prevent damage from flooding. The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in Article 3 of Chapter 40A of the General Statutes. (1971, c. 1167, s. 3; 1987, c. 827, s. 183; 2000-150, s. 1.)

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, substituted "Acquisition of existing structures" for "Existing artificial obstructions" in the catchline and rewrote the section.

§ 143-215.56. Delineation of flood hazard areas and 100-year floodplains; powers of Department; powers of local governments and of the Department.

(a) For the purpose of delineating a flood hazard area and evaluating the possibility of flood damages, a local government may:

(1) Request technical assistance from the competent State and federal agencies, including the Army Corps of Engineers, the Natural Resource Conservation Service, the Tennessee Valley Authority, the Federal Emergency Management Agency, the North Carolina Depart-

ment of Crime Control and Public Safety, the North Carolina Geodetic Survey, the North Carolina Geological Survey, and the U.S. Geological Survey, or successor agencies.

(2) Utilize the reports and data supplied by federal and State agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part.

(b) The Department shall provide advice and assistance to any local government having responsibilities under this Part. In exercising this function the Department may furnish manuals, suggested standards, plans, and other technical data; conduct training programs; give advice and assistance with respect to delineation of flood hazard areas and the development of appropriate ordinances; and provide any other advice and assistance that the Department deems appropriate. The Department shall send a copy of every rule adopted to implement this Part to the governing body of each local government in the State.

(c) A local government may delineate any flood hazard area subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies. A local government may also delineate a flood hazard area by reference to a map prepared pursuant to the National Flood Insurance Program. Alterations in the lines delineated shall be indicated by appropriate entries upon or addition to the appropriate map, drawing, or description. Entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of the map, drawing, or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. A local government may provide for the redrawing of any map. A redrawn map shall supersede for all purposes the earlier map or maps that it is designated to replace upon the filing and approval thereof as designated and provided above.

(d) The Department may prepare a floodplain map that identifies the 100-year floodplain and base flood elevations for an area for the purposes of this Part if all of the following conditions apply:

(1) The 100-year floodplain and base flood elevations for the area are not identified on a floodplain map prepared pursuant to the National Flood Insurance Program within the previous five years.

(2) The Department determines that the 100-year floodplain and the base flood elevations for the area need to be identified and the use of the area regulated in accordance with the requirements of this Part in order to prevent damage from flooding.

(3) The Department prepares the floodplain map in accordance with the federal standards required for maps to be accepted for use in administering the National Flood Insurance Program.

(e) Prior to preparing a floodplain map pursuant to subsection (d) of this section, the Department shall advise each local government whose jurisdiction includes a portion of the area to be mapped.

(f) Upon completing a floodplain map pursuant to subsection (d) of this section, the Department shall both:

(1) Provide copies of the floodplain map to every local government whose jurisdiction includes a portion of the 100-year floodplain identified on the floodplain map.

(2) Submit the floodplain map to the Federal Emergency Management Agency for approval for use in administering the National Flood Insurance Program.

(g) Upon approval of a floodplain map prepared pursuant to subsection (d) of this section by the Federal Emergency Management Agency for use in administering the National Flood Insurance Program, it shall be the responsibility of each local government whose jurisdiction includes a portion of the 100-year floodplain identified in the floodplain map to incorporate the revised map into its floodplain ordinance. (1971, c. 1167, s. 3; 1973, c. 621, ss. 6, 7; c. 1262, s. 23; 1977, c. 374, s. 2; c. 771, s. 4; 1987, c. 827, ss. 154, 184; 2000-150, s. 1.)

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, substituted "flood hazard areas and 100-year floodplains; powers of Department; powers of local governments and of the Department" for "floodway; powers of Commission and Department; powers of local governments" in the catchline; in subsection (a), substituted "a flood hazard area" for "the floodway" and substituted "a local government may" for "responsible local governments are empowered to"; in subdivision (a)(1), inserted "State and," substituted "Natural Resource Conservation Service" for "Soil Conservation Service," inserted "the Federal Emergency ... Geological Survey" and substituted "agencies" for "agencies, and"; in subsection (b), substituted "shall provide" for "shall be empowered to render," substituted "the Department may" for "it shall specifically be authorized to," substituted "delineation of flood hazard areas and the development of appropriate ordinances; and provide any other advice and assistance that the Department deems appropriate" for "handling of particular applications; but it shall not be limited to such activities"; in subsection (c), substituted "flood hazard area" for "floodway" in the first sentence, rewrote the second sentence, substituted "the appropriate map, drawing" for "such map" in the third sentence, substituted "the map, drawing" for "such map" in the fifth sentence, and deleted "or the Commission" following "A local government" in the sixth sentence; rewrote subsection (d); and added subsections (e), (f) and (g); and made stylistic changes.

§ 143-215.57. Procedures in issuing permits.

(a) A local government may establish application forms and require maps, plans, and other information necessary for the issuance of permits in a manner consonant with the objectives of this Part. For this purpose a local government may take into account anticipated development in the foreseeable future that may be adversely affected by the obstruction, as well as existing development. They shall consider the effects of a proposed artificial obstruction in a stream in creating danger to life and property by:

(1) Water that may be backed up or diverted by the obstruction.
(2) The danger that the obstruction will be swept downstream to the injury of others.
(3) The injury or damage at the site of the obstruction itself.

(b) In prescribing standards and requirements for the issuance of permits under this Part and in issuing permits, local governments shall proceed as in the case of an ordinance for the better government of the county or city as the case may be. A city may exercise the powers granted in this Part not only within its corporate boundaries but also within the area of its extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any place within the county that is outside the zoning jurisdiction of a city in the county. If a city does not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction, the county may exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction. The county may regulate territory within the zoning jurisdiction of any city whose governing body, by resolution, agrees to the regulation. The governing body of a city may, upon one year's written notice, withdraw its approval of the county regulations, and those regulations shall have no further effect within the city's jurisdiction.

(c) The local governing body is hereby empowered to adopt regulations it may deem necessary concerning the form, time, and manner of submission of applications for permits under this Part. These regulations may provide for the issuance of permits under this Part by the local governing body or by an agency designated by the local governing body, as prescribed by the governing body. Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. The time and manner of election of a jury trial shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an appeal, no action shall be taken that would be unlawful in the absence of a permit issued under this Part. (1971, c. 1167, s. 3; 2000-150, s. 1.)

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, in subsection (a), in the first paragraph, substituted "A local government may" for "Responsible local governments are empowered to" in the first sentence, transferred the former second paragraph to be the present second sentence, and substituted "stream" for "floodway" in the third sentence; in subsection (b), deleted "responsible" preceding "local governments" in the first sentence, added the fourth sentence, substituted "the regulation" for "such regulation; provided, however, that any such" in the fifth sentence, and substituted "city" or a variant for for "municipality" or a variant throughout; substituted "the local governing body" for "said body" in the second sentence in subsection (c); and made minor punctuation and wording changes throughout the section.

§ 143-215.58. Violations and penalties.

(a) Any willful violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part shall constitute a Class 1 misdemeanor.

(a1) A local government may use all of the remedies available for the enforcement of ordinances under Chapters 153A and 160A of the General Statutes to enforce an ordinance adopted pursuant to this Part.

(b) Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Part or any ordinance adopted (or the provision of any permit issued) under the authority of this Part, shall constitute a separate violation of this Part for each day that the failure continues after written notice from the county board of commissioners or governing body of a city.

(c) In addition to or in lieu of other remedies, the county board of commissioners or governing body of a city may institute any appropriate action or proceeding to restrain or prevent any violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part, or to require any person, firm or corporation that has committed a violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction. (1971, c. 1167, s. 3; 1993, c. 539, s. 1022; 1994, Ex. Sess., c. 24, s. 14(c); 2000-150, s. 1.)

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, inserted "willful" in subsection (a); added subsection (a1); in subsection (b), substituted "for each day that the failure" for "for each 10 days that such failure" and substituted "board of commissioners or governing body of a city" for "or municipal governing body"; and in subsection (c), substituted "board of commissioners or governing body of a city" for "or municipal governing body" and substituted "that has committed a violation" for "which has committed any such violation."

§ 143-215.59. Other approvals required.

(a) The granting of a permit under the provisions of this Part shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.

(b) No permit for the construction of any structure to be located within a flood hazard area shall be granted by a political subdivision unless the applicant has first obtained the permit required by any local ordinance adopted pursuant to this Part. (1971, c. 1167, s. 3; 2000-150, s. 1.)

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, in subsection (b), substituted "flood hazard area" for "floodway" and inserted "any local ordinance adopted pursuant to."

§ 143-215.60. Liability for damages.

No action for damages sustained because of injury or property damage caused by a structure or obstruction for which a permit has been granted under this Part shall be brought against the State or any political subdivision of the State, or their employees or agents. (1971, c. 1167, s. 3; 2000-150, s. 1.)

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, substituted "or property damage caused by a structure or obstruction" for "caused by an obstruction."

§ 143-215.61. Floodplain management.

The provisions of this Part shall not preclude the imposition by responsible local governments of land use controls and other regulations in the interest of floodplain management for the 100-year floodplain. (1971, c. 1167, s. 3; 2000-150, s. 1.)

Effect of Amendments. — Session Laws 2000-150, s. 1, effective August 2, 2000, substituted "100-year floodplain" for "floodplain or the floodway."

ARTICLE 21A.

Oil Pollution and Hazardous Substances Control.

Part 2. Oil Discharge Controls.

§ 143-215.85. Required notice.

(a) Except as provided in G.S. 143-215.94E(a1) and subsection (b) of this section, every person owning or having control over oil or other substances discharged in any circumstances other than pursuant to a rule adopted by the Commission, a regulation of the U. S. Environmental Protection Agency, or a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Department receiving the notification shall immediately notify the Secretary or such member or members of the permanent staff of the Department as the

Secretary may designate. If the discharged substance of which the Department is notified is a pesticide regulated by the North Carolina Pesticide Board, the Department shall immediately inform the Chairman of the Pesticide Board. Removal operations under this Article of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board; provided that, in instances where entry of such hazardous substances into waters of the State is imminent, the Department may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters.

(b) As used in this subsection, "petroleum" has the same meaning as in G.S. 143-215.94A. A person who owns or has control over petroleum that is discharged into the environment shall immediately take measures to collect and remove the discharge, report the discharge to the Department within 24 hours of the discharge, and begin to restore the area affected by the discharge in accordance with the requirements of this Article if the volume of the petroleum that is discharged is 25 gallons or more or if the petroleum causes a sheen on nearby surface water or if the petroleum is discharged at a distance of 100 feet or less from any surface water body. If the volume of petroleum that is discharged is less than 25 gallons, the petroleum does not cause a sheen on nearby surface water, and the petroleum is discharged at a distance of more than 100 feet from all surface water bodies, the person who owns or has control over the petroleum shall immediately take measures to collect and remove the discharge. If a discharge of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the discharge or if the discharge causes a sheen on nearby surface water, the person who owns or has control over the petroleum shall immediately notify the Department. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 771, s. 4; c. 858, s. 1; 1979, c. 535, ss. 16, 17; 1987, c. 827, ss. 154, 194; 2000-54, s. 1.)

Effect of Amendments. — Session Laws 2000-54, s. 1, effective June 30, 2000, and applicable to any discharge of petroleum into the environment that occurs on or after that date, designated the existing paragraph as subsection (a) and added "Except as . . . this section" to the beginning of the first sentence; and added subsection (b).

Part 2A. Leaking Petroleum Underground Storage Tank Cleanup.

§ 143-215.94A. Definitions.

Cross References. — As to imposition of land-use restrictions to reduce danger to public health at contaminated sites, see § 143B-279.9

§ 143-215.94E. Rights and obligations of the owner or operator.

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator of the underground storage tank shall notify the Department pursuant to G.S. 143-215.85. The owner or operator of the underground storage tank shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(a1) If a spill or overfill associated with a petroleum underground storage tank results in a release of petroleum to the environment of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately clean up the spill or overfill, report the spill or overfill to the Department within 24 hours of the spill or overfill, and begin to restore the area affected in accordance with the requirements of this Article. The owner or operator of a petroleum underground storage tank shall immediately clean up a spill or overfill of less than 25 gallons of petroleum that does not cause a sheen on nearby surface water. If a spill or overfill of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the spill or overfill or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately notify the Department.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that subsection. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2).

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) for which the owner or operator is responsible. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner. The sum of payments from the Commercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2). This subsection shall not be construed to require a current landowner to cleanup a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(c) In the case of a discharge or release from a noncommercial underground storage tank or a commercial underground storage tank eligible for the Noncommercial Fund in accordance with G.S. 143-215.94D(b), the owner or operator may elect to have the Noncommercial Fund pay or reimburse the owner or operator for the costs described in G.S. 143-215.94D(b1) up to a maximum of one million dollars ($1,000,000) per discharge or release.

(c1) In the case of a discharge or release from a noncommercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the noncommercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Noncommercial Fund pay or reimburse the current landowner for ninety percent (90%) of any costs described in subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars ($5,000). Eligibility for reimbursement under this subsection may be transferred to a subsequent landowner from a current landowner who has paid the costs for which the landowner is responsible under this subsection. The sum of payments from the Noncommercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release. This subsection shall not be construed to require a current landowner to clean up a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(d) In any case where the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) exceed one million dollars ($1,000,000), or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars ($1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars ($1,500,000). Nothing contained in this Part shall limit or modify any liability that any party may have pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) When an owner, operator, or landowner pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with subsections (b), (b1), (c), and (c1) of this section. The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b), 143-215.94B(b1), and 143-215.94D(b1). An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this subsection within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes.

(e1) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes. The Secretary shall make the final agency decision in a contested case proceeding under this subsection.

(e2) The Commission may require an owner, operator, or landowner to obtain approval from the Department before proceeding with any task that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1). The Commission shall specify by rule those tasks for which preapproval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which preapproval is required if the owner, operator, or landowner failed to obtain preapproval of the task. The Department shall pay or reimburse the cost of a task for which preapproval is not required only if the cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) and if the Department determines that the cost is reasonable and necessary. The Commission shall adopt rules governing reimbursement of necessary and reasonable costs. In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a cost is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the cost.

(f) The Department shall not reimburse any owner or operator until the fund from which reimbursement will be made reaches one million dollars ($1,000,000).

(f1) Any person seeking payment or reimbursement from either the Commercial Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund. As used in this Part, the phrase "any other source including any contract of insurance" does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department if:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases;

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct; or

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is subject to a civil penalty as provided in G.S. 143-215.94W. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 7; 1991, c. 538, ss. 7, 22; 1991 (Reg. Sess., 1992), c. 817, s. 2; 1993, c. 400, s. 15; c. 402, s. 3; 1995, c. 377, s. 8; 1995 (Reg. Sess., 1996), c. 648, ss. 3, 4; 1998-161, ss. 4, 5, 8(a), (b), 11(b); 1998-215, s. 68; 2000-172, s. 7.1.)

Editor's Note. —

Session Laws 2000-172, s. 8.2, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-172, s. 7.1, effective August 2, 2000, substituted "G.S. 143-215.94W" for "G.S. 143-215.94K" in subsection (i).

§ 143-215.94P. Groundwater Protection Loan Fund.

(a) There is established under the control and direction of the Department the Groundwater Protection Loan Fund. This Loan Fund shall be a nonreverting revolving fund consisting of any monies appropriated to it by the General Assembly or available to it from grants, and other monies paid to it or recovered on behalf of the Loan Fund. The Loan Fund shall be credited with interest on the Loan Fund by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(b) The Loan Fund shall be used to provide loans to the owners of commercial petroleum underground storage tanks who are creditworthy but may be unable to secure conventional loans to upgrade or replace commercial underground storage tanks in use on 1 July 1991 so as to meet the performance standards applicable to tanks installed after 22 December 1988 or the requirements that existing underground storage tanks must meet by 22 December 1998. All applications for loans under this section must be received by the Department prior to 1 January 1995.

(c) The Department shall adopt rules for use in managing the Loan Fund. Rules for managing the Loan Fund shall be based on generally accepted standards prevailing among commercial lending institutions with such modifications as may be necessary to achieve the purpose of this section to make loans available to creditworthy applicants. The Department shall administer the loan program through existing commercial lending institutions. In the event that the Department is unable to arrange for the administration of the loan program through existing commercial institutions in all or any part of the State, the Department may administer the loan program through the Office of State Budget, Planning, and Management. Each commercial institution or agency that administers any part of the loan program shall collect all charges for securing and administering each loan, including but not limited to application fees, recording costs, collection costs, and attorneys' fees from the borrower. Receipt of a loan from the Loan Fund is not a right, duty, or privilege; therefore, Article 3 of Chapter 150B of the General Statutes does not apply to the grant or denial of a loan from the Loan Fund.

(d) Funds received in repayment of loans made from the Loan Fund shall be deposited into the Loan Fund until the proceeds of all approved loans are disbursed to the borrowers. Thereafter, funds received in repayment of loans made from the Loan Fund and any other funds remaining in the Loan Fund shall be deposited in the Commercial Fund.

(e) In the event of a default on a loan from the Loan Fund or a violation of a loan agreement, the Secretary may request the Attorney General to bring a civil action for collection of the amount owed or other appropriate relief. An action shall be filed in the superior court of the county where the loan recipient resides, where the loan recipient does business, or where the tanks replaced or upgraded by the loan are located. In an action, the Attorney General may recover all costs of litigation, including attorneys' fees.

(f) If the State incurs liability in extending credit from the Loan Fund and, as a result of the liability, the State is ordered to pay or, as part of a settlement agreement, agrees to pay damages or other costs, the State shall seek reimbursement for the amount of the damages or other costs from the following sources in the order listed:

(1) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks, including but not limited to the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).
(2) The Noncommercial Fund.
(3) The Commercial Fund. (1991, c. 538, s. 13; 1993, c. 400, s. 15; c. 402, s. 7; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (c).

Part 6. Dry-Cleaning Solvent Cleanup
(Repealed effective January 1, 2012 — See editor's notes).

§ 143-215.104A. (Repealed effective January 1, 2012 — See notes) Title.

Editor's Note. —
For an explanation of the repeal of the sections in this Part, see the editor's notes under this section in the main volume.

Session Laws 1997-392, s. 5, as amended by Session Laws 2000-19, s. 17, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until 30 June 2001."

§ 143-215.104B. (Repealed effective January 1, 2012 — See notes) Definitions.

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 143-215.77, 130A-2, and 130A-290 apply throughout this Part.

(b) Unless a different meaning is required by the context, the following definitions apply in this Part. The definitions set out in this subsection apply only to the implementation of this Part and do not define or limit the scope of any other remedial program:

(1) "Abandoned dry-cleaning facility site" or "abandoned site" means any real property or individual leasehold space on which a dry-cleaning facility or wholesale distribution facility formerly operated.

(2) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(3) "Commission" means the Environmental Management Commission.

(4) "Contaminant" means a regulated substance released into the environment.

(5) "Current standards" when used in connection with "cleanup," "remediated", or "remediation" means that cleanup or remediation of contamination complies with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Commission, the Commission for Health Services, or the Department instead of the risk-based standards established by the Commission pursuant to this Part.

(6) "Disposal" shall have the meaning ascribed to it in G.S. 130A-290.

(7) "Dry-cleaning facility" means a place of business located in this State and engaged in on-site dry-cleaning operations, other than a commercial uniform service or commercial linen supply facility.

(8) "Dry-cleaning operations" means cleaning of apparel and household fabrics by using one or more dry-cleaning solvents instead of water.

(9) "Dry-cleaning solvent" means Perchloroethylene F-1,1,3 or 1,1,1 tricholorethane, a petroleum-based solvent, another comparable product used as a cleaning agent in a dry-cleaning operation or the degradation products from these hazardous substances.

(10) "Dry-cleaning solvent assessment agreement" or "assessment agreement" means an agreement between the Commission and a potentially responsible party who desires to assess whether a release of dry-cleaning solvents at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility may be eligible for remediation under this Part and whether any other contaminants that are identified in the agreement may require remediation under other remedial programs operated or administered by the Department.

(11) "Dry-cleaning solvent contamination" means the presence of dry-cleaning solvent in the waters or surface or subsurface soils of the State, the bedrock or other rock formations, or buildings in a concentration above the level requiring remediation pursuant to the rules implementing Article 21A of Chapter 143.

(12) "Dry-cleaning solvent remediation agreement" or "remediation agreement" means an agreement between the Commission and a potentially responsible party who desires to clean up dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility under this Part and any other contaminants that are identi-

fied in the agreement under other remedial programs operated or administered by the Department.

(13) "Facility" means a dry-cleaning facility or a wholesale distribution facility.

(14) "Fund" means the Dry-Cleaning Solvent Cleanup Fund.

(15) "Hazardous waste" shall have the meaning ascribed to it in G.S. 130A-290.

(16) "Imminent hazard" means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

(17) "Local government" means a town, city, or county.

(18) "Operator" means any person operating a dry-cleaning facility or wholesale distribution facility, whether by lease, contract, or any other form of agreement.

(19) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(20) Repealed by Session Laws 2000, ch. 19, s. 3, effective on and after April 1, 1998.

(21) "Potentially responsible party" means any person who may have liability for assessment, monitoring, treatment, mitigation, or remediation of dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility.

(22) "Public health" means public health as the term is used in Article 9 of Chapter 130A of the General Statutes and 'human health' as the term is used in Articles 21 and 21A of Chapter 143 of the General Statutes.

(23) "Regulated substance" means a hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program implemented by the Department other than Part 2A of Article 21A of Chapter 143 of the General Statutes.

(24) "Release" means any spillage, leakage, pumping, placement, emptying, or dumping of dry-cleaning solvents resulting from a dry-cleaning operation or the operation of a wholesale distribution facility.

(25) "Remedial program" means a program implemented by the Department for the remediation of any contaminant, including the programs implemented under Article 9 of Chapter 130A of the General Statutes and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes but not the remedial program implemented under Part 2A of Article 21A of Chapter 143 of the General Statutes.

(26) "Remediation" means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transporting, or further release of a contaminant into the environment in order to protect public health or the environment.

(27) "Response costs" means costs incurred in connection with a certified facility or abandoned site that the Commission determines are reasonably necessary and consistent with the applicable requirements of the Commission and any applicable dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement.

(28) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

Part 6 has a delayed repeal date. See notes.

(29) "Treatment" shall have the meaning ascribed to it in G.S. 130A-290.

(30) "Waters" means any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, that is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.

(31) "Wholesale distribution facility" means a place of business located in this State and engaged in the storage, distribution, or sale of dry-cleaning solvents for use in dry-cleaning facilities.

(32) "Wholesale distributor" means a person who operates a wholesale distribution facility. (1997-392, s. 1; 2000-19, s. 3.)

Editor's Note. —

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, s. 3, effective on and after April 1, 1998, repealed subdivision (b)(20), which defined "pollution and remediation legal liability insurance."

§ 143-215.104C. (Repealed effective January 1, 2012 — See notes) Dry-Cleaning Solvent Cleanup Fund.

(a) Creation. — The Dry-Cleaning Solvent Cleanup Fund is established as a special revenue fund to be administered by the Commission. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund must be credited to it. The Fund is created to provide revenue to implement this Part.

(b) Sources of Revenue. — The following revenue is credited to the Fund:

(1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of the General Statutes.

(2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.

(3) Gifts and grants made to the Fund.

(4) Revenues credited to the Fund under G.S. 105-164.44E.

(c) **(Effective until July 1, 2001)** Disbursements. — A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or abandoned sites with higher priority before facilities or abandoned sites of lower priority, and facilities or abandoned sites with equal priority in the order in which the facilities or abandoned sites were prioritized

Part 6 has a delayed repeal date; § 143-215.104C(c) is set out four times. See notes.

until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards caused by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities.

(c) **(Effective July 1, 2001 until July 1, 2002)** Disbursements. — A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to forty percent (40%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities.

(c) **(Effective July 1, 2002 until July 1, 2003)** Disbursements. — A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to forty-five percent (45%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities.

(c) **(Effective July 1, 2003)** Disbursements. — A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities. (1997-392, s. 1; 2000-19, ss. 2, 5, 5.1-5.3.)

Subsection (c) Set Out Four Times. — The first version of subsection (c) set out above is effective until July 1, 2001. The second version of subsection (c) set out above is effective July 1, 2001 until July 1, 2002. The third version of subsection (c) set out above is effective July 1, 2002 until July 1, 2003. The fourth version of subsection (c) set out above is effective July 1, 2003.

Cross References. — As to transfer of sales and use taxes to Dry-Cleaning Solvent Cleanup Fund, see § 105-164.44E.

Editor's Note. —

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, ss. 2 and 5, effective June 26, 2000, added subdivision (b)(4); and in subsection (c), substituted "obligate monies to facilities ...abandoned sites were prioritized" for "pay the claims with the highest priority before claims of lower priority, and claims of equal priority in the order in which the facility or abandoned site was certified."

Session Laws 2000-19, s. 5.1, effective July 1, 2001, substituted "forty percent (40%)" for "twenty percent (20%)" in the last sentence of subsection (c).

Session Laws 2000-19, s. 5.2, effective July 1, 2002, substituted "forty-five percent (45%)" for "forty percent (40%)" in the last sentence of subsection (c).

Session Laws 2000-19, s. 5.3, effective July 1, 2003, substituted "twenty percent (20%)" for "forty-five percent (45%)" in the last sentence of subsection (c).

§ 143-215.104D. (Repealed effective January 1, 2012 — See notes) Powers of the Commission.

(a) Administrative Functions. — The Commission may delegate any or all of the powers enumerated in this subsection to the Department. The Commission shall:

(1) Accept petitions for certification and petitions to enter into dry-cleaning solvent assessment agreements or remediation agreements under this Part.

(2) Prioritize certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites for the initiation of assessment or remediation activities that are reimbursable from the Fund.

Part 6 has a delayed repeal date. See notes.

(3) Develop forms to be used by persons applying for reimbursement of assessment or remediation costs.
(4) Schedule funding of assessment and remediation activities.
(5) Determine whether assessment or remediation is necessary at a site at which dry-cleaning solvent contamination has occurred.
(5a) Enter into contracts with private contractors for assessment and remediation activities at certified dry-cleaning facilities, certified wholesale distribution facilities, and certified abandoned dry-cleaning facility sites.
(6) Determine that all necessary assessment and remediation has been completed at a contamination site.
(7) Make payments from the Fund to reimburse the costs of assessment and remediation.

(b) Rule making. — The Commission shall adopt rules as are necessary to implement the provisions of this Part. Rules adopted by the Commission shall be consistent with and shall not duplicate, but may incorporate by reference, the rules adopted by the Commission for Health Services pursuant to Article 9 of Chapter 130A of the General Statutes. The Commission shall not delegate the rule-making powers provided in this subsection.

(1) The Commission may adopt rules governing:
a. Fees for response costs reimbursable under this Part.
b. The certification and decertification of facilities or abandoned sites.
c. The prioritization of facilities or abandoned sites and scheduling of funding for assessment and remediation activities. These rules shall provide for:
1. Consideration of the degree of harm or risk to public health and the environment.
2. Consideration of the order in which certification is issued for the facility or abandoned site.
3. Consideration of the relative cost of assessment and remediation activities.
4. Use of the Fund so as to maximize the reduction of harm or risk posed by certified facilities, certified abandoned sites, uncertified facilities and uncertified sites.
d. The disbursement of revenue from the Fund for payment or reimbursement of approved assessment or remediation costs.
e. The determination whether assessment or remediation is necessary at a contamination site.
f. The determination that all necessary assessment and remediation has been completed at a contamination site.
g. The terms and conditions of dry-cleaning solvent assessment agreements and remediation agreements.
h. The determination whether additional assessment or remediation is necessary at a contamination site previously closed under this Part.

(2) **(See editor's note)** The Commission may adopt rules establishing minimum management practices for handling of dry-cleaning solvent at dry-cleaning facilities and wholesale distribution facilities. The rules may:
a. Require that all perchloroethylene dry-cleaning machines installed at a dry-cleaning facility after the effective date of the rule or temporary rule meet air emission standards that equal or exceed the standards that apply to comparable dry-to-dry perchloroethylene dry-cleaning machines with integral refrigerated condensation.

Part 6 has a delayed repeal date. See notes.

b. Prohibit the discharge of dry-cleaning solvents or water that contains dry-cleaning solvents into sanitary sewers, septic systems, storm sewers, or waters of the State.
c. Require spill containment structures around dry-cleaning machines, filters, stills, vapor adsorbers, solvent storage areas, and waste solvent storage areas.
d. Require floor sealants for cleaning room areas if the Commission finds the sealants to be effective.
e. Require, by 1 January 2002, the use of improved solvent transfer systems to prevent releases at the time of delivery of solvents to a dry-cleaning facility.
f. Require any other solvent-handling practices the Commission may find necessary and appropriate to minimize the risk of releases at dry-cleaning facilities or wholesale distribution facilities.

(3) The Commission shall adopt rules establishing a risk-based approach applicable to the assessment, prioritization, and remediation of dry-cleaning solvent contamination resulting from releases at facilities or abandoned sites certified pursuant to G.S. 143-215.104G. The rules shall address, at a minimum:
a. Criteria and methods for determining remediation requirements, including the level of remediation necessary to assure adequate protection of public health and the environment.
b. The circumstances under which information specific to the dry-cleaning solvent contamination site should be considered and required.
c. The circumstances under which restrictions on the future use of any remediated dry-cleaning solvent contamination site should be considered and required as a means of achieving and maintaining an adequate level of protection for public health and the environment.
d. Strategies for the assessment and remediation of dry-cleaning solvent contamination, including presumptive remedial responses sufficient to provide an adequate level of protection as described under sub-subdivision a. of this subdivision.

(c) All rules adopted by the Commission shall be applicable to all dry-cleaning facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the State and shall, to the maximum extent practicable, be cost-effective and technically feasible while protecting public health and the environment from the release of dry-cleaning solvents.

(d) Unless otherwise provided in this Part, the Commission may delegate any of its rights, duties, and responsibilities under this Part to the Department. (1997-392, s. 1; 2000-19, s. 6.)

Editor's Note. — Session Laws 1997-392, s. 5, as amended by Session Laws 2000-19, s. 17, provides that the Act constitutes a recent act of the General Assembly under G.S. 150B-21.1 and the Environmental Management Commission may adopt temporary rules to implement this act until June 30, 2001.

Session Laws 2000-19, s. 19, authorizes the Commission on Health Services to adopt a rule that requires a person who generates wastes at a dry-cleaning facility or wholesale distribution facility, other than wastewater generated from dry-cleaning processes, which contain solvents perchloroethylene, F-1,1,3, or 1,1,1 trichloroethane to deliver the wastes to a facility legally authorized to manage or recycle hazardous wastes containing these solvents.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Effect of Amendments. — Session Laws 2000-19, s. 6, effective June 26, 2000, in subsection (a), rewrote the introductory language, added subdivision (a)(5a); and deleted "Any payments made by a private contractor engaged by the Commission shall be authorized by the Commission prior to disbursement" from the end of subdivision (a)(7).

§ 143-215.104E: Repealed by Session Laws 2000-19, s. 3, effective on and after April 1, 1998.

§ 143-215.104F. (Repealed effective January 1, 2012 — See notes) Requirements for certification, assessment agreements, and remediation agreements.

(a) Any person petitioning for certification of a facility or abandoned site pursuant to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to G.S. 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to G.S. 143-215.104I, shall meet the requirements set out in this section and any other applicable requirements of this Part.

(b) Requirements for Potentially Responsible Persons Generally. — Every petitioner shall provide the Commission with:

(1) Any information that the petitioner possesses relating to the contamination at the facility or abandoned site described in the petition.

(2) Information necessary to demonstrate the person's ability to incur the response costs specified in subsection of this section.

(3) Repealed by Session Laws 2000, ch. 19, s. 3, effective on and after April 1, 1998.

(4) Information necessary to demonstrate that the petitioner, and any parent, subsidiary, or other affiliate of the petitioner, has substantially complied with:

a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.

b. The requirements applicable to any remediation in which the petitioner has previously engaged.

c. Federal and State laws, regulations, and rules for the protection of the environment.

(5) Evidence demonstrating that a release of dry-cleaning solvent has occurred at the facility or abandoned site and that the release has resulted in dry-cleaning solvent contamination.

(c) Requirement for Property Owners. — In addition to the information required by subsection (b) of this section, a petitioner who is the owner of the property on which the dry-cleaning solvent contamination identified in the petition is located shall provide the Commission a written agreement authorizing the Commission or its agent to have access to the property for purposes of conducting assessment or remediation activities or determining whether assessment or remediation activities are being conducted in compliance with this Part and any assessment agreement or remediation agreement.

(c1) Costs incurred by the petitioner for activities to obtain certification of a facility or abandoned site shall not be reimbursable from the Fund.

Part 6 has a delayed repeal date. See notes.

(d) The Commission shall reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner is an owner or operator of the facility described in the petition and the facility was not being operated in compliance with minimum management practices adopted by the Commission pursuant to G.S. 143-215.104D(b)(2) at the time the contamination was discovered.

(2) The petitioner is an owner or operator of the facility described in the petition and the petitioner owed delinquent taxes under Article 5D of Chapter 105 of the General Statutes at the time the dry-cleaning solvent contamination was discovered.

(3) Repealed by Session Laws 2000, ch. 19, s. 3, effective on and after April 1, 1998.

(e) The Commission may reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner fails to provide the information required by subsection (b) of this section.

(2) The petitioner falsified any information in its petition that was material to the determination of the priority ranking, the nature, scope and extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.

(f) Financial Responsibility Requirements. — Each potentially responsible person who petitions the Commission to certify a facility or abandoned site shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners. The financial responsibility required shall be as follows:

(1) For dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first five thousand dollars ($5,000) of the costs of assessment or remediation and one percent (1%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding one million dollars ($1,000,000).

(2) For dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first ten thousand dollars ($10,000) of the costs of assessment or remediation, two percent (2%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

(3) For dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first fifteen thousand dollars ($15,000) of the costs of assessment or remediation, three percent (3%) of the costs of assess-

Part 6 has a delayed repeal date. See notes.

ment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

(4) For wholesale distribution facilities and abandoned dry-cleaning facility sites, the first twenty-five thousands dollars ($25,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

(g) Repealed by Session Laws 2000, ch. 19, s. 3, effective on and after April 1, 1998. (1997-392, s. 1; 2000-19, ss. 3, 4, 7.)

Editor's Note. —

Session Laws 1997-392, s. 7, as amended by Session Laws 2000-19, s. 18, provides that any person undertaking assessment or remediation of dry-cleaning solvent contamination pursuant to a notice of violation or an enforcement action by the Department of Environment and Natural Resources from October 1, 1997 to June 30, 2001, will be able, on or after June 30, 2001, to seek reimbursement from, the Dry-Cleaning Solvent Cleanup Fund for costs exceeding $50,000, provided certain conditions are met. Also, any person who, as of June 30, 2001, is undertaking assessment or remediation of dry-cleaning solvent contamination is eligible to petition the Commission to enter into an agreement regarding financial contribution of parties. The total payments made pursuant to this section in a single fiscal year are not to exceed ten percent of the revenues credited to the Cleanup Fund in the preceding fiscal year. Session Laws 1997-392, s. 8, provided that s. 7 would be repealed effective January 1, 2000.

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, ss. 3 and 4, effective on and after April 1, 1998, repealed subdivision (b)(3), pertaining to the requirement for evidence of financial responsibility; repealed subdivision (d)(3), allowing the Commission to reject a petition where the owner has failed to establish financial responsibility; rewrote subsection (f); and repealed subsection (g), providing the financial responsibility requirements where a dry-cleaning facility is determined to be uninsurable.

Session Laws 2000-19, s. 7, effective June 26, 2000, rewrote subdivision (b)(1) and added subdivisions (b)(4) and (b)(5); inserted "conducting assessment or remediation activities or" in subsection (c); added subsection (c1); and substituted "certify a facility or abandoned site" for "enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreeement" in the first sentence in the introductory language of subsection (f).

§ 143-215.104G. (Repealed effective January 1, 2012 — See notes) Certification of facilities and abandoned sites.

(a) A potentially responsible party may petition the Commission to certify a facility or abandoned site where a release of dry-cleaning solvent has occurred. The Commission shall certify the facility or abandoned site if the petitioner meets the applicable requirements of G.S. 143-215.104F. Upon its decision to

Part 6 has a delayed repeal date. See notes.

certify a facility or abandoned site, the Commission shall inform the petitioner of its decision and of the initial priority ranking of the facility or site.

(b) Repealed by Session Laws 2000, ch. 19, s. 8, effective June 26, 2000.

(c) A potentially responsible party who petitions for certification of a facility or abandoned site shall provide the Commission with either of the following:

(1) A written statement of the petitioner's intent to enter into an assessment agreement or remediation agreement.

(2) A written statement of the petitioner's intent to conduct assessment and remediation activities pursuant to subsection (d) of this section.

(d) A person who has access to property that is contaminated by dry-cleaning solvent and who has successfully petitioned for certification of the facility or abandoned site from which the contamination is believed to have resulted may undertake assessment or remediation of dry-cleaning solvent contamination located on the property consistent with the standards established by the Commission pursuant to G.S. 143-215.104D(b)(3) without first entering into a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement. No assessment or remediation activities undertaken pursuant to this subsection shall rely on standards that require the creation of land-use restrictions. A person who undertakes assessment or remediation activities pursuant to this subsection shall provide the Commission prior written notice of the activity. Costs associated with assessment or remediation activities undertaken pursuant to this subsection shall not be eligible for reimbursement from the Fund.

(e) The rejection of any petition filed pursuant to this section shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The rejection of a petition or the decertification of a facility or abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site. (1997-392, s. 1; 2000-19, s. 8.)

Editor's Note. —

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, s. 8, effective June 26, 2000, substituted "solvent has" for "solvent is believed to have" in subsection (a); repealed subsection (b) pertaining to changing the priority rankings of any facility or abandoned site by the Commission; and rewrote subdivision (c)(1).

§ 143-215.104H. (Repealed effective January 1, 2012 — See notes) Dry-Cleaning Solvent Assessment Agreements.

(a) Assessment Agreements. — One or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent assessment agreement regarding a facility or abandoned site that has been certified pursuant to G.S. 143-215.104G. The Commission may, in its discretion, enter into an assessment agreement with any potentially responsible party who satisfies the requirements of this section and the applicable requirements of

Part 6 has a delayed repeal date. See notes.

G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single assessment agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into an assessment agreement pursuant to this section. The Commission may require the petitioners to provide the Commission with any information necessary to demonstrate:

(1) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission.

(2) The projected schedule for funding of assessment activities is adequate.

(3) The assessment activities to be undertaken with respect to the dry-cleaning solvent contamination and any other contamination at the contamination site are adequate.

(4) The person who will be responsible for implementation of the activities is capable and qualified to conduct the assessment.

(4a) The amount of funds already expended by the petitioner for assessment or remediation of dry-cleaning solvent contamination at the facility or abandoned site.

(5) The petitioner has and will continue to have available the financial resources necessary to pay the costs of assessment activities and the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(6) The permits or other authorizations required to conduct the assessment activities and to lawfully dispose of any hazardous substances or wastes generated by the assessment activities have been or can be obtained.

(7) The assessment activities will not increase the existing level of public exposure to health or environmental hazards at the contamination site.

(8) The costs to be incurred in connection with the assessment activities contemplated by the assessment agreement are reasonable and necessary.

(9) The petitioner has obtained the consent of other property owners to enter into their property for the purpose of conducting assessment activities specified in the assessment agreement.

(b) The terms and conditions of an assessment agreement regarding dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. An assessment agreement shall, subject to the availability of monies from the Fund:

(1) Repealed by Session Laws 2000, ch. 19, s. 9, effective June 26, 2000.

(1a) Require that the petitioner shall be liable to the Fund for an amount equal to the difference, if any, between the applicable amount for which the petitioner is responsible under G.S. 143-215.104F and the amount reasonably paid by the petitioner for assessment or remediation activities of the type specified in G.S. 143-215.104N(a)(1) through (7) and that are otherwise consistent with the requirements of this Part.

(2) Provide for the prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the assessment agreement and this Part.

(c) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement with any petitioner if:

(1) The petitioner will not accept financial responsibility for the share of the response costs required by G.S. 143-215.104F.

Part 6 has a delayed repeal date. See notes.

(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking assessment activities required by the Commission.

(3) The petitioner fails to provide any information required by subsection (a) of this section.

(d) The refusal of the Commission to enter into a dry-cleaning solvent assessment agreement with any petitioner shall not affect the rights of any other petitioner under this Part, except that the refusal may be the basis for rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

(e) If the Commission determines from an assessment prepared pursuant to this Part that the degree of risk to public health or the environment resulting from dry-cleaning solvent contamination otherwise subject to assessment or remediation under this Part and Article 9 of Chapter 130A is acceptable in light of the criteria established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the Commission shall issue a written statement of its determination and notify the owner or operator of the facility or abandoned site responsible for the contamination that no cleanup, no further cleanup, or no further action is required in connection with the contamination.

(f) If the Commission determines that no remediation or further action is required in connection with dry-cleaning solvent contamination otherwise subject to assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the Commission shall not pay or reimburse any response costs otherwise payable or reimbursable under this Part from the Fund other than costs reasonable and necessary to conduct the risk assessment pursuant to this section and in compliance with a dry-cleaning solvent assessment agreement. (1997-392, s. 1; 2000-19, s. 9.)

Editor's Note. —

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, s. 9, effective June 26, 2000, in subsection (a), at the end of the introductory language, substituted "The Commission may require the petitioners to" for "Petitioners shall" and deleted "that the" following "demonstrate", rewrote subdivisions (a)(1) and (a)(2) and added subdivision (a)(4a); and in subsection (b), repealed subdivision (b)(1) which read: "Specify the date on which remediation will begin" and added subdivision (b)(1a); and made other minor stylistic changes.

§ 143-215.104I. (Repealed effective January 1, 2012 — See notes) Dry-Cleaning solvent remediation agreements.

(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements

Part 6 has a delayed repeal date. See notes.

of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate:

(1) Repealed by Session Laws 2000, ch. 19, s. 10, effective June 26, 2000.
(2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.
(3) There is a public benefit commensurate with the liability protection provided under this Part.
(4) The petitioner has or can obtain the financial, managerial, and technical means to fully implement the remediation agreement and assure the safe use of the contamination site.
(5) The petitioner has complied with or will comply with all applicable procedural requirements.
(6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.
(7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.
(8) The projected schedule for funding of remediation activities.
(9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.
(10) The expenditures eligible for reimbursement from the Fund and to be incurred in connection with the remediation agreement are reasonable and necessary.
(11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement.

(b) In negotiating a remediation agreement, parties may rely on land-use restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M. A remediation agreement may provide for remediation in accordance with standards that are based on those land-use restrictions.

(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation, including remediation of contaminants other than dry-cleaning solvents, to be conducted on the property, including:
    a. A description of specific areas where remediation is to be conducted.
    b. The remediation method or methods to be employed.

Part 6 has a delayed repeal date. See notes.

c. The resources that the petitioner will make available and the degree to which the petitioner intends to rely on the Fund for resources.
d. A schedule of remediation activities.
e. Applicable remediation standards. Applicable remediation standards for dry-cleaning solvent contamination shall not exceed the requirements adopted by the Commission pursuant to G.S. 143-104D(b)(3).
f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use restrictions that will apply to the contamination site or other property.
(3) The desired results of any remediation or land-use restrictions with respect to the contamination site.
(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.
(5) The consequences of achieving or not achieving the desired results.
(6) The priority ranking of the facility or abandoned site.
(7) The person who will conduct the remediation if that person is not the potentially responsible party entering the remediation agreement.

(d) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with any petitioner if:

(1) The petitioner will not accept financial responsibility for the share of the response costs established in G.S. 143-215.104F. This requirement shall not apply to a petitioner who (i) is the owner of property upon which the dry-cleaning solvent contamination is located, and (ii) is not a current or former owner or operator of a facility believed to be responsible for the contamination.
(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking remediation activities required by the Commission.
(3) The petitioner fails to provide any information that is necessary to demonstrate the facts required to be shown by subsection (a) of this section.

(e) In addition to the bases set forth in subsection (d) of this section, the Commission may refuse to enter into a dry-cleaning solvent remediation agreement with the owner of the property on which a contamination site is located if the owner refuses to accept limitations on the future use of the property and to give notice of these limitations pursuant to G.S. 143-215.104M.

(f) The refusal of the Commission to enter into a dry-cleaning remediation agreement with any petitioner shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into a remediation agreement may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. A remediation agreement shall provide, subject to availability of monies in the Fund, for prompt reimbursement of response costs incurred in assessment or remediation activities that are found by the Commission to be consistent with the remediation agreement and this Part. A remediation

Part 6 has a delayed repeal date. See notes.

agreement may provide that the Commission conduct assessment and remediation activities at the facility or abandoned site.

(h) Any failure of a petitioner or the petitioner's agents or employees to comply with the dry-cleaning solvent remediation agreement constitutes a violation of this Part by the petitioner. (1997-392, s. 1; 2000-19, ss. 10, 11, 13.)

Editor's Note. —

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, ss. 10, 11, and 13, effective June 26, 2000, in subsection (a), deleted "that" following "demonstrate" at the end of the introductory language, repealed subdivision (a)(1), pertaining to the petitioner's compliance with the terms of any agreement, requirements applicable to any remediation, and federal and state laws, regulations and rules, and deleted "including reimbursements from the Fund" following "activities" in subdivision (a)(8); in subdivision (c)(6), deleted "final" preceding "priority"; and in subsection (g), inserted "or remediation" in the second sentence, and added the last sentence.

§ 143-215.104J. (Repealed effective January 1, 2012 — See notes) Decertification; termination of assessment agreements and remediation agreements.

(a) The Commission may decertify a facility or abandoned site or renegotiate or terminate an assessment agreement or remediation agreement with respect to any party thereto in the following circumstances:

(1) The owner or operator of the facility, at any time subsequent to the certification of the facility, violates any of the minimum management requirements adopted by the Commission pursuant to G.S. 143-215.104D(b)(2).

(2) In the case of dry-cleaning contamination on property that is owned by a petitioner, the petitioner fails to file a Notice of Dry-Cleaning Solvent Remediation, if required, as provided in G.S. 143-215.104M.

(3) The potentially responsible persons who are parties to a dry-cleaning solvent assessment agreement are unable to reach an agreement with the Commission to enter into a dry-cleaning solvent remediation agreement within the time specified in the assessment agreement.

(4) The payment of taxes assessed to the facility under Article 5D of Chapter 105 of the General Statutes is delinquent.

(5) Repealed by Session Laws 2000, ch. 19, s. 3, effective on or after April 1, 1998.

(6) The owner or operator fails to comply with all applicable requirements of this Part to complete any assessment or remediation activities required by an assessment agreement or remediation agreement.

(7) The owner or operator of a facility for which an assessment or remediation activity is scheduled or in progress transfers the ownership or operation of the facility or abandoned site to another person without the prior consent of the Commission and the execution of a substitute assessment agreement or remediation agreement.

Part 6 has a delayed repeal date. See notes.

(8) The standards applied to the dry-cleaning solvent contamination remediation or containment under the provisions of this Part and the dry-cleaning solvent remediation agreement will, or are likely to, cause the Department to fail to comply with the terms and conditions under which it operates and administers a remediation program by delegation or similar authorization from the United States or one of its departments or agencies, including the Environmental Protection Agency.

(b) Prior to decertifying any facility or abandoned site or renegotiating or terminating any assessment agreement or remediation agreement, the Commission shall give the petitioners notice and opportunity for hearing. The Commission is not required to give the petitioners notice and opportunity for hearing when the Commission reasonably takes an emergency action to abate an imminent hazard caused by or arising from assessment or remediation activities at a contamination site whether the Commission issues a special order pursuant to G.S. 143-215.2 or takes other action.

(c) Decertification of any facility or abandoned site or renegotiation or termination of any assessment agreement or remediation agreement pursuant to this section shall not affect the rights of any petitioner, other than a petitioner whose violation of the provisions of subsection (a) of this section was the basis for the decertification, renegotiation, or termination and any parent, subsidiary, or other affiliate of that petitioner. If the Commission decertifies a facility or abandoned site or terminates an assessment agreement or remediation agreement with any party to the agreement pursuant to subsection (a) of this section, the Commission shall use its best efforts to negotiate a substitute agreement with any remaining parties to the agreement. (1997-392, s. 1; 2000-19, s. 3.)

Editor's Note. —
Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, s. 3, effective on and after April 1, 1998, repealed subdivision (a)(5), authorizing decertification of a facility or renegotiation or termination of an agreement for failure to maintain financial responsibility.

§ 143-215.104N. (Repealed effective January 1, 2012 — See notes) Reimbursement of dry-cleaning solvent assessment and remediation costs; limitations; collection of reimbursement.

(a) Reimbursement. — To the extent monies are available in the Fund for reimbursement of response costs, the Commission shall reimburse any person, including a private contractor, responsible for implementing reasonable and necessary assessment and remediation activities at a contamination site associated with a certified facility or a certified abandoned site pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement for the following assessment and remediation response costs, for which appropriate documentation is submitted:

Part 6 has a delayed repeal date. See notes.

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(1) Costs of assessment with respect to dry-cleaning solvent contamination.
(2) Costs of treatment or replacement of potable water supplies affected by the contamination.
(3) Costs of remediation of affected soil, groundwater, surface waters, bedrock or other rock formations, or buildings.
(4) Monitoring of the contamination.
(5) Inspection and supervision of activities described in this subsection.
(6) Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with assessment and remediation conducted pursuant to this Part.
(7) Other activities reasonably required to protect public health and the environment.

(b) Limitations. — Notwithstanding subsection (a) of this section, the Commission shall not make any disbursement from the Fund:

(1) For costs incurred in connection with facilities or abandoned sites not certified pursuant to G.S. 143-215.104G.
(2) For costs not incurred pursuant to a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement.
(3) For costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site for which funds obligated by petitioners pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in accordance with G.S. 143-214.104F(f) are overdue.
(4) For costs at a contamination site that has been identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition), except that the Commission may authorize distribution of the required State match in an amount not to exceed two hundred thousand dollars ($200,000) per year per site. The Commission shall not delegate its authority to disburse funds pursuant to this subdivision.
(5) For remediation beyond the level required under the Commission's risk-based criteria for determining the appropriate level of remediation.
(6) For assessment or remediation response costs incurred in connection with any individual dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in excess of two hundred thousand dollars ($200,000) per year. However, that the Commission may disburse up to four hundred thousand dollars ($400,000) per year for assessment and remediation costs incurred in connection with a certified facility or a certified abandoned site that poses an imminent hazard.
(7) That would result in a diminution of the Fund balance below one hundred thousand dollars ($100,000), unless an emergency exists in connection with a dry-cleaning solvent contamination abandoned site that constitutes an imminent hazard.
(8) For any costs incurred in connection with dry-cleaning solvent contamination from a facility located on a United States military base or owned by the United States or a department or agency of the United States.
(9) For any costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site owned by the State or a department or agency of the State.

Part 6 has a delayed repeal date. See notes.

(c) The Commission shall not pay or reimburse any response costs arising from a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement until the petitioners who are party to the agreement have paid all sums due under the agreement.

(d) Each dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreements made by the Commission pursuant to this Part shall expressly state that the Commission's obligation to reimburse response costs incurred pursuant to these agreements shall be contingent upon the availability of monies from the Fund and that the State and its departments and agencies have no obligation to reimburse otherwise eligible expenses if monies are not available in the Fund to pay the reimbursements. If, at any time, the Commission determines that the cost of assessment and remediation activities reimbursable pursuant to existing dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements equals or exceeds the total revenues expected to be credited to the Fund over the life of the Fund, the Commission shall publish notice of the determination in the North Carolina Register. Following the publication of a notice pursuant to this section, the Commission may continue to enter into dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements until the day of adjournment of the first regular session of the General Assembly that begins after the date the notice is published, but shall have no authority to enter into additional dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements after that date unless the Commission first determines either (i) that revenues will be available from the Fund to reimburse the costs of assessment and remediation activities expected to be reimbursable pursuant to the agreements, or (ii) that assessment and remediation activities undertaken pursuant to the agreements will be paid entirely from sources other than the Fund. For the purposes of this subsection, the term "day of adjournment" shall mean: (i) in the case of a regular session held in an odd-numbered year, the day the General Assembly adjourns by joint resolution for more than 10 days, and (ii) in the case of a regular session held in an even-numbered year, the day the General Assembly adjourns sine die.

(e) The Commission shall pay the reimbursable response costs of eligible parties as they are incurred. If the cleanup of the contamination site is not completed as required by the remediation agreement, any response costs previously reimbursed for the cleanup shall be repaid to the Fund, with interest. The Commission shall request the Attorney General to commence a civil action to secure repayment of response costs and interest of the costs. (1997-392, s. 1; 2000-19, ss. 12, 14(a), (b).)

Editor's Note. —

Session Laws 1997-392, s. 7, as amended by Session Laws 2000-19, s. 18, provides that any person undertaking assessment or remediation of dry-cleaning solvent contamination pursuant to a notice of violation or an enforcement action by the Department of Environment and Natural Resources from October 1, 1997 to June 30, 2001, will be able, on or after June 30, 2001, to seek reimbursement from, the Dry-Cleaning Solvent Cleanup Fund for costs exceeding $50,000, provided certain conditions are met. Also, any person who, as of June 30, 2001, is undertaking assessment or remediation of dry-cleaning solvent contamination is eligible to petition the Commission to enter into an agreement regarding financial contribution of parties. The total payments made pursuant to this section in a single fiscal year are not to exceed ten percent of the revenues credited to the Cleanup Fund in the preceding fiscal year. Session Laws 1997-392, s. 8, provided that s. 7

would be repealed effective January 1, 2000.

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, ss. 12, and 14(a) and (b), effective June 26, 2000, in subsection (a), in the introductory language, inserted "including a private contractor," and "reasonable and necessary," and added "for which appropriate documentation is submitted" to the end; rewrote subdivision (b)(3); and in subsection (c), inserted "The" at the beginning, and substituted "have paid all sums due under the agreement" for "have exhausted the financial resources made available under G.S. 143-215.104E and G.S. 143-215.104F."

§ 143-215.104O. (Repealed effective January 1, 2012 — See notes) Remediation of uncertified sites.

(a) In the event the owner or operator of a facility or the current owner of an abandoned site cannot be identified or located, unreasonably refuses to enter into either an assessment agreement or remediation agreement or cannot be made to comply with the provisions of an assessment agreement or remediation agreement between the petitioner and the Commission, the Commission may direct the Department or a private contractor engaged by the Commission to use staff, equipment, or materials under the control of the Department or contractor or provided by other cooperating federal, State, or local agencies to develop and implement a plan for abatement of an imminent hazard, or to provide interim alternative sources of drinking water to third parties affected by dry-cleaning solvent contamination resulting from a release at the facility or abandoned site. The cost of any of these actions shall be paid from the Fund. The Department or private contractor shall keep a record of all expenses incurred for personnel and for the use of equipment and materials and all other expenses of developing and implementing the remediation plan.

(b) The Commission shall request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this section.

(c) In the event a civil action is commenced pursuant to this Part to recover monies paid from the Fund, the Commission may recover, in addition to any amount due, the costs of the action, including reasonable attorneys" fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the Fund or other source from which the expenditures were made. (1997-392, s. 1; 2000-19, s. 15.)

Editor's Note. —

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, s. 15, effective June 26, 2000, substituted "section" for "subsection" at the end of subsection (b).

§ 143-215.104P. (Repealed effective January 1, 2012 — See notes) Enforcement procedures; civil penalties.

(a) The Secretary may assess a civil penalty of not more than ten thousand dollars ($10,000) or, if the violation involves a hazardous waste, as defined in G.S. 130-290, of not more than twenty-five thousand dollars ($25,000) against any person who:

(1) Repealed by Session Laws 2000, ch. 19, s. 3, effective on and after April 1, 1998.
(2) Engages in dry-cleaning operations using dry-cleaning solvent for which the appropriate sales or use tax has not been paid.
(3) Fails to comply with rules adopted by the Commission pursuant to this Part.
(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.
(5) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
(6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.
(7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.
(8) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Part or rule implementing this Part.
(9) Knowingly makes a false statement of material fact in a rule-making proceeding or contested case under this Part.
(10) Refuses access to the Commission or its duly designated representative to any premises for purposes of conducting a lawful inspection provided for in this Part or rule implementing this Part.

(b) If any action or failure to act for which a penalty may be assessed under subsection (a) of this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day or, if the violation involves a hazardous waste, as defined in G.S. 130-290, not exceed twenty-five thousand dollars ($25,000) per day. A penalty for a continuous violation shall not exceed two hundred thousand dollars ($200,000) for each period of 30 days during which the violation continues.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment

Part 6 has a delayed repeal date. See notes.

was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver the remission request and the recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located in order to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section or requests remission of the assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located to recover the amount of the assessment. A civil action must be filed within three years of the date the final agency decision or court order was served on the violator. (1997-392, s. 1; 2000-19, s. 3.)

Editor's Note. —

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, s. 3, effective on and after April 1, 1998, repealed subdivision (a)(1), which provided for a civil penalty where a person failed to establish financial responsibility for a dry-cleaning facility.

§ 143-215.104S. (Repealed effective January 1, 2012 — See notes) Appeals.

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104E through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. The Commission shall make the final agency decision in contested cases initiated pursuant to this section. Notwithstanding the provisions of G.S. 6-19.1, no party seeking to compel remediation of dry-cleaning solvent contamination in excess of that required by a dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to recover attorneys' fees. (1997-392, s. 1; 2000-19, s. 16.)

Editor's Note. —

G.S. 143-215.104E, referred to in this section, was repealed by Session Laws 2000-19, s. 3, effective April 1, 1998.

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

Effect of Amendments. — Session Laws 2000-19, s. 16, effective June 26, 2000, inserted the fourth sentence.

Editor's Note. — G.S. 143-215.104E, referred to in this section, was repealed by Session Laws 2000-19, s. 3, effective April 1, 1998.

Article 21B.

Air Pollution Control.

§ 143-215.107. Air quality standards and classifications.

(a) Duty to Adopt Plans, Standards, etc. — The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. This subdivision does not apply to that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).

(6) To adopt motor vehicle emissions standards; to adopt, when necessary and practicable, a motor vehicle emissions inspection and maintenance program to improve ambient air quality; to require manufacturers of motor vehicles to furnish to the Equipment and Tool Institute and, upon request and at a reasonable charge, to any person who maintains or repairs a motor vehicle, all information necessary to fully make use of the on-board diagnostic equipment and the data

compiled by that equipment; to certify to the Commissioner of Motor Vehicles that ambient air quality will be improved by the implementation of a motor vehicle emissions inspection and maintenance program in a county. The Commission shall implement this subdivision as provided in G.S. 143-215.107A.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.

(8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide allowances and nitrogen oxides (NOx) emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.

(9) To regulate the content of motor fuels, as defined in G.S. 119-16, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.

(10) To develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.

(11) To develop and adopt economically feasible standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B.

(12) To develop and adopt a program of incentives to promote voluntary reductions of emissions of air contaminants, including, but not limited to, emissions banking and trading and credit for voluntary early reduction of emissions.

(13) To develop and adopt rules governing the certification of persons who inspect vehicle-mounted tanks used to transport motor fuel and to require that inspection of these tanks be performed only by certified personnel.

(14) To develop and adopt rules governing the sale and service of mobile source exhaust emissions analyzers and to require that vendors of these analyzers provide adequate surety to purchasers for the performance of the vendor's contractual or other obligations related to the sale and service of analyzers.

(b) Criteria for Standards. — In developing air quality and emission control standards, motor vehicle emissions standards, motor vehicle emissions inspection and maintenance requirements, rules governing the content of motor fuels or requiring the use of reformulated gasoline, and other standards and plans to improve ambient air quality, the Commission shall consider varying local conditions and requirements and may prescribe uniform standards and plans throughout the State or different standards and plans for different counties or areas as may be necessary and appropriate to improve ambient air quality in the State or within a particular county or area, achieve attainment or preclude violations of state or national ambient air quality standards, meet other federal requirements, or achieve the purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 205.

(f), (g). Repealed by Session Laws 1995, c. 507, s. 27. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784; 1979, c. 545, s. 1; c. 931; 1987, c. 827, ss. 154, 205; 1989, c. 132; c. 168, s. 48; 1991, c. 403, s. 3; c. 552, s. 9; c. 761, s. 40; 1991 (Reg.

Sess., 1992), c. 889, s. 3; 1993, c. 400, s. 7; 1993 (Reg. Sess., 1994), c. 686, s. 6; 1995, c. 123, s. 9; c. 507, s. 27.8(s); 1997-458, s. 3.1; 1999-328, s. 3.12; 2000-134, s. 1.)

Editor's Note. —

Session Laws 2000-134, s. 20, effective July 14, 2000, provides that during the period July 1, 2002 through December 31, 2005, in the counties of Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, and Wake, an emissions inspection station, an emissions inspection mechanic, and an emissions self-inspector, as those terms are used in G.S. 20-183.4A, may elect to perform emissions inspections: (i) only on 1975 through 1995 model vehicles using an emissions analyzer; (ii) only on 1996 or later model vehicles using equipment to analyze data provided by the on-board diagnostic (OBD) equipment; or (iii) both on 1975 through 1995 model vehicles using an emissions analyzer and on 1996 or later model vehicles using equipment to analyze data provided by the on-board diagnostic (OBD) equipment. This section does not authorize an emissions inspection station or an emissions self-inspector to perform an emissions inspection on a vehicle of a model year for which the emissions inspection station or emissions self-inspector does not have the equipment necessary to perform an emissions inspection of vehicles of that model year nor does this section authorize an emissions inspection mechanic to perform an emissions inspection on a vehicle unless the emissions inspection mechanic has successfully completed a course, as required by G.S. 20-183.4A(2) or G.S. 20-183.4A(2a) [G.S. 20-183.4A(c)(2) or (c)(2a)], that includes training on the use of the equipment necessary to perform an emissions inspection on vehicles of that model year.

Session Laws 2000-134, s. 21, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that, notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Environmental Management Commission and the Division of Motor Vehicles of the Department of Transportation may adopt temporary rules to implement the provisions of this act. This section is to continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules.

Session Laws 2000-134, s. 23, directs the Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, the Division of Motor Vehicles of the Department of Transportation, the affected parties, and the Fiscal Research Division of the Legislative Services Office to study issues related to the costs associated with the motor vehicle safety and emissions inspection and maintenance program, specifically to determine what constitutes a reasonable fee for motor vehicle inspections under the current program and under the enhanced inspection and maintenance program to be implemented pursuant to G.S. 20-183.3, as amended by the act, taking into consideration the cost of emissions inspection equipment, the useful life of the equipment, the average period of time during which a purchaser of this equipment is able to amortize this cost, telephone charges incurred in connection with the registration denial program, whether a fee should be charged to reinspect a vehicle that fails an emissions inspection after repairs to the vehicle have been made, the cost of the safety inspection program in relation to the emissions inspection program, and any other factors that the Commission determines to be relevant. The Commission may also evaluate strategies to ensure an efficient and orderly implementation of the enhanced inspection and maintenance program required by Part III of S.L. 1999-328 and this act. The Environmental Review Commission is to recommend legislation to amend G.S. 20-183.7 to increase the fee for motor vehicle emissions inspections to the 2001 General Assembly.

Effect of Amendments. —

Session Laws 2000-134, s. 1, effective July 14, 2000, in subdivision (a)(6), deleted "to require that motor vehicle emissions be monitored while the vehicle is in operation by means of onboard diagnostic equipment (OBD) installed by the vehicle manufacturer" following "to improve ambient air quality," and substituted "on-board" for "onboard."

§ 143-215.107A. Motor vehicle emissions testing and maintenance program.

(a) General Provisions. —

(1) G.S. 143-215.107(a)(6) shall be implemented as provided in this section.

(2) Motor vehicle emissions inspections shall be performed by a person who holds an emissions inspection mechanic license issued as pro-

vided in G.S. 20-183.4A(c) at a station that holds an emissions inspection station license issued under G.S. 20-183.4A(a) or at a place of business that holds an emissions self-inspector license issued as provided in G.S. 20-183.4A(d). Motor vehicle emissions inspections may be performed by a decentralized network of test-and-repair stations as described in 40 Code of Federal Regulations § 51.353 (1 July 1998 Edition). The Commission may not require that motor vehicle emissions inspections be performed by a network of centralized or decentralized test-only stations.

(b) Repealed by Session Laws 2000, ch. 134, s. 2, effective July 14, 2000.

(c) **(Effective until July 1, 2003 — See editor's notes)** Counties Covered. — Motor vehicle emissions inspections shall be performed only in the following counties: Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, and Wake.

(c) **(Effective July 1, 2003 until January 1, 2004 — See editor's notes)** Counties Covered. — Motor vehicle emissions inspections shall be performed in the following counties: Cabarrus, Catawba, Cumberland, Davidson, Durham, Forsyth, Gaston, Guilford, Iredell, Johnston, Mecklenburg, Orange, Rowan, Union, and Wake.

(c) **(Effective January 1, 2004 until July 1, 2004 — See editor's notes)** Counties Covered. — Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Cabarrus, Catawba, Chatham, Cumberland, Davidson, Durham, Forsyth, Franklin, Gaston, Guilford, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Moore, Orange, Randolph, Rowan, Stanly, Union, and Wake.

(c) **(Effective July 1, 2004 until January 1, 2005 — See editor's notes)** Counties Covered. — Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Cabarrus, Catawba, Chatham, Cleveland, Cumberland, Davidson, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Moore, Orange, Randolph, Rockingham, Rowan, Stanly, Union, and Wake.

(c) **(Effective January 1, 2005 until July 1, 2005 — See editor's notes)** Counties Covered. — Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Cabarrus, Catawba, Chatham, Cleveland, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Iredell, Johnston, Lee, Lenoir, Lincoln, Mecklenburg, Moore, Nash, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Stanly, Union, Wake, Wayne and Wilson.

(c) **(Effective July 1, 2005 until January 1, 2006 — See editor's notes)** Counties Covered. — Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cleveland, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Haywood, Henderson, Iredell, Johnston, Lee, Lenoir, Lincoln, Mecklenburg, Moore, Nash, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Wake, Wayne, Wilkes and Wilson.

(d) Additional Counties. — The Commission may require that motor vehicle emissions inspections be performed in counties in addition to those set out in subsection (c) of this section. In determining whether to require that motor vehicle emissions inspections be performed in a county, the Commission may consider the population of, and distribution of population in, the county; the projected change in population of, and distribution of population in, the county; the number of vehicles registered in the county; the projected change in the

§ 143-215.107A(c) is set out six times. See notes.

number of vehicles registered in the county; vehicle miles traveled in the county; the projected change in vehicle miles traveled in the county; current and projected commuting patterns in the county; and the current and projected impact of these factors on attainment of air quality standards in the county and in areas outside the county. The Commission may not require that motor vehicle emissions inspections be performed in any county with a population of less than 40,000 based on the most recent population estimates prepared by the State Planning Officer. The Commission may not require that motor vehicle emissions inspections be performed in any county in which the number of vehicle miles traveled per day is less than 900,000, based on the most recent estimates prepared by the Department of Transportation. In order to disapprove a rule that requires that motor vehicle emissions inspections be performed in one or more additional counties, a bill introduced pursuant to G.S. 150B-21.3(b) must amend subsection (c) of this section to add one or more other counties in which the total population and vehicle miles traveled per day equal or exceed the total population and vehicle miles traveled in the county or counties listed in the rule that the bill would disapprove. (1999-328, ss. 3.1, 3.3, 3.4, 3.5, 3.6, 3.7; 2000-134, ss. 2, 3.)

Subsection (c) Set Out Six Times. — The first version of subsection (c) set out above is effective until July 1, 2003. The second version of subsection (c) set out above is effective July 1, 2003 until January 1, 2004. The third version of subsection (c) set out above is effective January 1, 2004, until July 1, 2004. The fourth version of subsection (c) set out above is effective July 1, 2004 until January 1, 2005. The fifth version of subsection (c) set out above is effective January 1, 2005 until July 1, 2005. The sixth version of subsection (c) set out above is effective July 1, 2005 until January 1, 2006.

Editor's Note. —

Session Laws 1999-328, s. 3.2, as amended by Session Laws 2000-134, s. 4, in part provides that the Environmental Management Commission shall not require that motor vehicle emissions inspections be performed in any county pursuant to G.S. 143-215.107A(d), as enacted by Section 3.1 of this act, prior to July 1, 2006. The Environmental Management Commission shall not require motor vehicle emissions inspections for diesel powered vehicles prior to July 1, 2001.

Session Laws 2000-134, s. 4, amended Session Laws 1999-328, s. 3.2, to delete a provision that the Environmental Management Commission shall adopt rules to implement G.S. 143-215.107A(b), as enacted by Section 3.1 of the act, which rules were to become effective on July 1, 2002.

Session Laws 1999-328, ss. 3.3 through 3.8, as amended by Session Laws 2000-134, s. 4.1, amend G.S. 143-215.107A(c), as enacted by Section 3.1 of the 1999 act. The postponed amendment by Session Laws 1999-328, s. 3.3, has been set out as the second version of subsection (c) above, effective July 1, 2003. The postponed amendment by Session Laws 1999-328, s. 3.4, has been set out as the third version of subsection (c) above, effective January 1, 2004. The postponed amendment by Session Laws 1999-328, s. 3.5, has been set out as the fourth version of subsection (c), effective July 1, 2004. The postponed amendment by Session Laws 1999-328, s. 3.6, has been set out as the fifth version of subsection (c), effective January 1, 2005. The amendment by Session Laws 1999-328, s. 3.7, has been set out as the sixth version of subsection (c), effective July 1, 2005. The amendment by Session Laws 1999-328, s. 3.8, adds Brunswick, Carteret, Craven, New Hanover and Onslow to the list of counties in subsection (c), effective January 1, 2006.

Session Laws 2000-134, s. 5, repealed Session Laws 1999-328, s. 3.9, which provided that Sections 3.3 through 3.8 of the 1999 act become effective only if G.S. 20-183.7 has been amended to increase the fee for motor vehicle inspections no later than December 31, 2000 and that G.S. 143-215.107A(b), as enacted by Section 3.1 of this act, and Section 3.2 of this act are repealed effective January 1, 2001, unless, prior to January 1, 2001, G.S. 20-183.7 has been amended to increase the fee for motor vehicle emissions inspection.

Session Laws 2000-134, s. 20, effective July 14, 2000, provides that during the period July 1, 2002 through December 31, 2005, in the counties of Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, and Wake, an emissions inspection station, an emissions inspection mechanic, and an emissions self-inspector, as those terms are used in G.S. 20-183.4A, may elect to perform emissions inspections: (i) only on 1975 through 1995 model vehicles using an emissions analyzer; (ii) only on 1996 or later model vehicles using equipment to analyze data provided by the on-board diagnostic (OBD) equipment; or (iii) both on 1975 through 1995 model vehicles using an emissions analyzer and on 1996 or later model vehicles using equipment to analyze data provided by the on-board diagnostic (OBD) equipment. This section does not authorize an emissions inspection station or an emissions self-inspector to perform an emissions inspection on a vehicle of a model year for which the emissions inspection station or emissions self-inspector does not have the equipment necessary to perform an emissions inspection of vehicles of that model year nor does this section authorize an emissions inspection mechanic to perform an emissions inspection on a vehicle unless the emissions inspection mechanic has successfully completed a course, as required by G.S. 20-183.4A(2) or G.S. 20-183.4A(2a) (G.S. 20-183.4A(c)(2) or (c)(2a)), that includes training on the use of the equipment necessary to perform an emissions inspection on vehicles of that model year.

Session Laws 2000-134, s. 21, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that, notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Environmental Management Commission and the Division of Motor Vehicles of the Department of Transportation may adopt temporary rules to implement the provisions of this act. This section is to continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules.

Session Laws 2000-134, s. 23, directs the Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, the Division of Motor Vehicles of the Department of Transportation, the affected parties, and the Fiscal Research Division of the Legislative Services Office to study issues related to the costs associated with the motor vehicle safety and emissions inspection and maintenance program, specifically to determine what constitutes a reasonable fee for motor vehicle inspections under the current program and under the enhanced inspection and maintenance program to be implemented pursuant to G.S. 20-183.3, as amended by the act, taking into consideration the cost of emissions inspection equipment, the useful life of the equipment, the average period of time during which a purchaser of this equipment is able to amortize this cost, telephone charges incurred in connection with the registration denial program, whether a fee should be charged to reinspect a vehicle that fails an emissions inspection after repairs to the vehicle have been made, the cost of the safety inspection program in relation to the emissions inspection program, and any other factors that the Commission determines to be relevant. The Commission may also evaluate strategies to ensure an efficient and orderly implementation of the enhanced inspection and maintenance program required by Part III of S.L. 1999-328 and this act. The Environmental Review Commission is to recommend legislation to amend G.S. 20-183.7 to increase the fee for motor vehicle emissions inspections to the 2001 General Assembly.

Effect of Amendments. —

Session Laws 2000-134, ss. 2 and 3, effective July 14, 2000, repealed subsection (b), providing that vehicles emissions inspections be performed by using the two-mode Acceleration Simulation Model; and substituted "inspections" for "testing" twice in subsection (d).

§ 143-215.108. Control of sources of air pollution; permits required.

OPINIONS OF ATTORNEY GENERAL

The signing of a proposed Memorandum of Understanding with federal land managers of National Parks and Wilderness Areas in and around North Carolina would not constitute rulemaking under the N.C. Administrative Procedures Act and, therefore, did not require rulemaking by the Environmental Management Commission. See Opinion of Attorney General to Mr. William R. Gilkeson, Staff Attorney, N.C. General Assembly, 1998 N.C.A.G. 54 (12/4/98).

Article 29C.

Youth Councils Act.

§§ 143-283.24 through 143-283.30: Repealed by Session Laws 1975, c. 879, s. 30.

Editor's Note. — The repeal line above is set out to correct an error in the main volume.

§ 143-283.31: Repealed by Session Laws 1973, c. 797, s. 1.

Editor's Note. — The repeal line above is set out to correct an error in the main volume.

§ 143-283.32: Repealed by Session Laws 1975, c. 879, s. 30.

Editor's Note. — The repeal line above is set out to correct an error in the main volume.

§§ 143-283.33 through 143-283.40: Reserved for future codification purposes.

Editor's Note. — The reserve line above is set out to correct an error in the main volume.

Article 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.

(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority that was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages that the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of damages as provided in subsection (a1) of this section, but in no event shall the amount of damages awarded exceed the amounts authorized in G.S. 143-299.2 cumulatively to all claimants on account of injury and damage to any one person arising out of a single occurrence. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State.

(a1) The unit of State government that employed the employee at the time the cause of action arose shall pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid in accordance with G.S. 143-299.4.

(b) If a State agency, otherwise authorized to purchase insurance, purchases a policy of commercial liability insurance providing coverage in an amount at least equal to the limits of the State Tort Claims Act, such insurance coverage shall be in lieu of the State's obligation for payment under this Article.

(c) The North Carolina High School Athletic Association, Inc., is a State agency for purposes of this Article, and its liability in tort shall be only under this Article. This subsection does not extend to any independent contractor of the Association. The Association shall be obligated for payments under this Article, through the purchase of commercial insurance or otherwise, in lieu of any responsibility of the State or The University of North Carolina for this payment. The Association shall be similarly obligated to reimburse or have reimbursed the Department of Justice for any expenses in defending any claim against the Association under this Article. (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1; 1973, c. 507, s. 5; c. 1225, s. 1; 1977, c. 464, s. 34; c. 529, ss. 1, 2; 1979, c. 1053, s. 1; 1987, c. 684, s. 1; 1987 (Reg. Sess., 1988), c. 1087, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 19.33(a); c. 777, s. 5(a); 2000-67, ss. 7A(a), 7A(b).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7A(a) and (b), effective July 1, 2000, and applicable to claims or actions pending on or after that date, in subsection (a), in the third sentence, deleted "such" following "If the commission finds that there was," substituted "authority that" for "authority, which," substituted "the amount of damages that the claimant" for "the amount of damages which the claimant," substituted "payment of damages as provided in subsection (a1) of this section" for "payment of such damages by the department, institution or agency concerned," substituted "amounts authorized in G.S. 143-299.2" for "sum of one hundred fifty thousand dollars ($150,000)," and added "arising out of a single occurrence"; and added subsection (a1).

CASE NOTES

I. IN GENERAL.

Property Damage Where Truck Wrongfully Seized. — Ample, competent evidence supported the Industrial Commission's reversal of a hearing commissioner where defendant erroneously seized plaintiff's truck and failed to install or have anti-freeze installed, although advised by plaintiff to do so, and where this failure proximately caused the engine block to crack. McGee v. North Carolina Dep't of Revenue, 135 N.C. App. 319, 520 S.E.2d 84 (1999).

Only Claims Against State Agencies Authorized. —

Where disbarred attorney brought claims against the Disciplinary Hearing Commission and individual members thereon, the Industrial Commission properly dismissed all claims against the individual defendants, because the Tort Claims Act embraces only claims against State agencies. Frazier v. Murray, 135 N.C. App. 43, 519 S.E.2d 525 (1999).

Public Duty Doctrine Applied to Claim

Against Disciplinary Hearing Commission. — Disbarred attorney's claim against the Disciplinary Hearing Commission for negligent infliction of emotional distress in the performance of its duties came under the public duty doctrine, since the Commission was acting within its statutory authority, under § 84-28.1, when it held plaintiff in criminal contempt. Frazier v. Murray, 135 N.C. App. 43, 519 S.E.2d 525 (1999).

Recovery May Not Be Had for Intentional Injuries. —

Since injuries intentionally inflicted by employees of a State agency are not compensable under the Tort Claims Act, the Industrial Commission correctly dismissed claims of false imprisonment and intentional infliction of emotional distress against the Disciplinary Hearing Commission. Frazier v. Murray, 135 N.C. App. 43, 519 S.E.2d 525 (1999).

Post-Judgment Interest Not Authorized. — Plaintiff was not entitled to pre- or post-judgment interest under § 24-5 for his claim against the State under the Tort Claims Act. McGee v. North Carolina Dep't of Revenue, 135 N.C. App. 319, 520 S.E.2d 84 (1999).

§ 143-291.3. Counterclaims by State.

The filing of a claim under this Article shall constitute consent by the plaintiff to the jurisdiction of the Industrial Commission to hear and determine any counterclaim of the maximum amount authorized for a claim in G.S. 143-299.2 or less that may be filed on behalf of a State department, institution or agency, or a county or city board of education. A final award of the Industrial Commission awarding damages on a counterclaim shall be filed with the clerk of the superior court of the county where the case was heard. These awards shall be docketed and shall be enforceable in the same manner as judgments of the General Court of Justice. Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in this section shall require the filing of a counterclaim. (1987 (Reg. Sess., 1988), c. 1087, s. 3; 1995, c. 509, s. 82; 2000-67, s. 7A(c).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 7A(j), provides that, notwithstanding the limitations of G.S. 143-291.3, for claims pending on the effective date of the act, any counterclaim made by the State under G.S. 143-291.3 shall not exceed the greater of $150,000 or the amount of the plaintiff's claim.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7A(c), effective July 1, 2000, and applicable to claims filed on or after that date, in the first sentence, substituted "plaintiff" for "plaintiff(s)" and substituted "the maximum amount authorized for a claim in G.S. 143-299.2 or less that may be filed on behalf of a State department, institution or agency," for "one hundred fifty thousand dollars ($150,000) or less which may be filed on behalf of a State department, institution, or agency"; substituted "clerk of the superior court of the county where" for "Clerk of the Superior Court of the county wherein" in the second sentence; and deleted "such" following "require the filing of" in the last sentence.

§ 143-299.2. Limitation on payments by the State.

(a) The maximum amount that the State may pay cumulatively to all claimants on account of injury and damage to any one person arising out of any one occurrence, whether the claim or claims are brought under this Article, or Article 31A or Article 31B of this Chapter, shall be five hundred thousand dollars ($500,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c).

(b) The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State. (1987 (Reg. Sess., 1988), c. 1087, s. 6; 1995, c. 509, s. 83; 2000-67, s. 7A(d).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7A(d), effective July 1, 2000, and applicable to claims or actions pending on or after that date, designated the existing first sentence as present subsection (a) and the existing second sentence as present subsection (b); and in subsection (a), substituted "maximum amount that" for "maximum amount which," inserted "arising out of any one occurrence," and substituted "this Article, or Article 31A or Article 31B of this Chapter, shall be five hundred thousand dollars ($500,000)" for "this Article or Article 31A or Article 31B, shall be one hundred fifty thousand dollars ($150,000)."

§ 143-299.4. Payment of State excess liability.

For each claim payable during any fiscal year in excess of one hundred fifty thousand dollars ($150,000) per claim arising under this Article, or Article 31A or 31B of this Chapter, on account of injury or damage to any one person, each State agency shall transfer to the Office of State Budget, Planning, and Management its proportionate share of that agency's estimated lapsed salaries, as determined by the Director of the Budget, and the Director of the Budget shall use these transferred funds to pay the balance of that claim in excess of one hundred fifty thousand dollars ($150,000). (2000-67, s. 7A(e); 2000-140, s. 93.1(i).)

Editor's Note. — Session Laws 2000-67, s. 28.5, made this section effective July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 7A(k), makes this section applicable to claims or actions pending on or after the effective date (July 1, 2000).

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-140, s. 93.1(i), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.

(a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged mechanical defects or other defects which may affect the safe operation of a public school bus or school transportation service vehicle resulting from an alleged negligent act of maintenance personnel or as a result of any alleged negligent act or omission of the driver, transportation safety assistant, or monitor of a public school bus or school transportation service vehicle when:

(1) The driver is an employee of the county or city administrative unit of which that board is the governing body, and the driver is paid or authorized to be paid by that administrative unit,

(1a) The monitor was appointed and acting in accordance with G.S. 115C-245(d),

(1b) The transportation safety assistant was employed and acting in accordance with G.S. 115C-245(e), or

(2) The driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation,

Division of Motor Vehicles, or an authorized employee of that board or a county or city administrative unit thereof,

and which driver was at the time of the alleged negligent act or omission operating a public school bus or school transportation service vehicle in accordance with G.S. 115C-242 in the course of his employment by or training for that administrative unit or board, which monitor was at the time of the alleged negligent act or omission acting as such in the course of serving under G.S. 115C-245(d), or which transportation safety assistant was at the time of the alleged negligent act or omission acting as such in the course of serving under G.S. 115C-245(e). The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this Article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by G.S. 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made, one copy of the plaintiff's affidavit to the State Board of Education and one copy of the plaintiff's affidavit to the office of the Attorney General of North Carolina. All notices with respect to tort claims against any such county or city board of education shall be given to the superintendent of schools of the county or city administrative unit of which such board is a governing board, to the State Board of Education and also to the office of the Attorney General of North Carolina.

(b) The Attorney General shall be charged with the duty of representing the city or county board of education in connection with claims asserted against them pursuant to this section where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance.

(c) In the event that the Industrial Commission awards damages against any county or city board of education under this section, the Attorney General shall draw avoucher for the amount required to pay the award. The funds necessary to cover the first one hundred fifty thousand dollars ($150,000) of liability per claim for claims against county and city boards of education for accidents involving school buses and school transportation service vehicles shall be made available from funds appropriated to the State Board of Education. The balance of any liability owed shall be paid in accordance with G.S. 143-299.4. Neither the county or city boards of education, or the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon a voucher by the Attorney General. Settlement and payment may be made by the Attorney General as provided in G.S. 143-295.

(d) The Attorney General may defend any civil action brought against the driver, transportation safety assistant, or monitor of a public school bus or school transportation service vehicle or school bus maintenance mechanic when the driver or mechanic is employed and paid by the local school administrative unit, when the monitor is acting in accordance with G.S. 115C-245(d), when the transportation safety assistant is acting in accordance with G.S. 115C-245(e), or when the driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles, or an authorized employee of a county or city board of education or administrative unit. The Attorney General may afford this defense through the use of a member of his staff or, in his discretion, employ private counsel. The Attorney General is authorized to pay any judgment rendered in the civil action not to exceed the limit provided under the Tort Claims Act. The funds necessary to cover the first one hundred fifty thousand dollars ($150,000) of liability per claim shall be made available from funds appropriated to the State Board of Education. The balance of any liability owed shall be paid in accordance with G.S. 143-299.4. The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, up to the limit provided in the Tort Claims Act, provided that the authority granted in this subsection shall be limited to only those claims that would be within the jurisdiction of the Industrial Commission under the Tort Claims Act. (1955, c. 1283; 1961, c. 1102, ss. 1-3; 1967, c. 1032, s. 1; 1975, c. 589, s. 1; c. 916, ss. 1, 2; 1977, c. 935, s. 1; 1979, 2nd Sess., c. 1332, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 30; 1998-212, s. 9.17(b); 2000-67, ss. 7A(f), 7A(g).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 7A(f) and (g), effective July 1, 2000, and applicable to claims or actions pending on or after that date, rewrote subsection (c); and in subsection (d), in the first sentence, deleted "which may be" following "any civil action," substituted "when the driver or mechanic" for "when such driver or mechanic," and deleted "thereof" following the last instance of "administrative unit," substituted "in the civil action" for "in such civil action" in the third sentence, added the fourth sentence, and substituted "claims that would be" for "claims which would be" in the last sentence.

§ 143-300.6. Payments of judgments; compromise and settlement of claims.

(a) Payment of Judgments and Settlements. In an action to which this Article applies, the State shall pay (i) a final judgment awarded in a court of competent jurisdiction against a State employee or (ii) the amount due under a settlement of the action under this section. The unit of State government that employed the employee shall pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid in accordance with G.S. 143-299.4. This section does not waive the sovereign immunity of the State with respect to any claim. A payment of a judgment or settlement of a claim against a State employee or several State employees as joint tort-feasors may not exceed the amount payable for one claim under the Tort Claims Act.

(b) Settlement of Claims. The Attorney General may compromise and settle any claim covered by this section to the extent he finds the claim valid. A settlement in excess of the limit provided in subsection (a) must be approved by the employee. In an action in which the Attorney General has stated in writing that private counsel should be provided the employee because of a conflict of interest between the employee and the State, a settlement in excess of the limit provided in subsection (a) must be approved by the private counsel.

(c) Other Insurance. The coverage afforded employees and former employees under this Article shall be excess coverage over any commercial liability insurance, other than insurance written under G.S. 58-32-15, up to the limit provided in subsection (a). (1973, c. 1372; 1975, c. 209, ss. 1, 2; 1979, c. 886; 1981, c. 1109, s. 2; 1991, c. 674, s. 2; 2000-67, s. 7A(h).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7A(h), effective July 1, 2000, and applicable to claims or actions pending on or after that date, substituted "State government that employed the employee shall pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid in accordance with G.S. 143-299.4" for "State government by which the employee was employed shall make the payment" in subsection (a).

Article 31B.

Defense of Public School Employees.

§ 143-300.16. Payment of judgments and settlement of claims.

(a) Any final judgment awarded against an employee in an action that meets the requirements of G.S. 143-300.14, or any amount payable under a settlement of the action, shall be paid the State. The first one hundred fifty thousand dollars($150,000) of liability shall be paid from funds appropriated tothe State Board of Education for the payment of State Tort Claims. The balance of any payment owed shall be paid in accordance with G.S. 143-299.4. No payment shall be made from either funds appropriated to the State Board of Education or funds transferred from State agencies under G.S. 143-299.4 for any judgment for punitive damages. Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered under this section or authorize the payment of any judgment or settlement against a public school employee in excess of the limit provided in the Tort Claims Act.

(b) The Attorney General may settle any claim to which this Article applies which he finds valid. In any case in which the Attorney General has stated in writing that private counsel ought to be provided because of a conflict with the interests of the State, any settlement shall be approved by the private counsel and the Attorney General.

(c) The coverage afforded an employee under this Article is excess coverage over any commercial insurance liability that the employee may have. (1979, c. 971, s. 2; 2000-67, s. 7A(i).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 7A(i), effective July 1, 2000, and applicable to claims or actions pending on or after that date, rewrote subsection (a).

Article 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

Local Modification. — (As to Article 33C) City of Charlotte: 2000-26, s. 1. For additional local modifications to this section, see the main volume.

§ 143-318.10. All official meetings of public bodies open to the public.

CASE NOTES

Cited in Multimedia Publishing of N.C., Inc. v. Henderson County, — N.C. App. —, 525 S.E.2d 786, 2000 N.C. App. LEXIS 112 (2000), cert. denied, 351 N.C. 474, — S.E.2d — (2000).

§ 143-318.11. Closed sessions.

CASE NOTES

Legislative Intent of Subsection (a)(3). — The legislature did not intend the reference to claims and settlements in the second half of the (a)(3) exception to create a limitation to the exception, but only to provide an illustration of what types of discussions can proceed in closed session. Multimedia Publishing of N.C., Inc. v. Henderson County, — N.C. App. —, 525 S.E.2d 786, 2000 N.C. App. LEXIS 112 (2000), cert. denied, 351 N.C. 474, — S.E.2d — (2000).

Burden of Proof Requires Objective Indica. — The burden is on the government body to demonstrate that the attorney-client exception in (a)(3) applies, and the government body can only meet its burden by providing some objective indicia that the exception is applicable under the circumstances; mere assertions by the body or its attorney(s) in pleadings will not suffice. Multimedia Publishing of N.C., Inc. v. Henderson County, — N.C. App. —, 525 S.E.2d 786, 2000 N.C. App. LEXIS 112 (2000), cert. denied, 351 N.C. 474, — S.E.2d — (2000).

The present attorney-client exception in subsection (a)(3) does not require a claim to be pending or threatened before the privilege of a closed session may be invoked by the government body. Multimedia Publishing of N.C., Inc. v. Henderson County, — N.C. App. —, 525 S.E.2d 786, 2000 N.C. App. LEXIS 112 (2000), cert. denied, 351 N.C. 474, — S.E.2d — (2000).

Discussions Allowed Under Attorney-Client Privilege in (a)(3). — Discussions regarding the drafting, phrasing, scope, and meaning of proposed enactments would be permissible during a closed session under (a)(3), but as soon as discussions move beyond legal technicalities and into the propriety and merits of proposed enactments, the legal justification for closing the session ends. Multimedia Publishing of N.C., Inc. v. Henderson County, — N.C. App. —, 525 S.E.2d 786, 2000 N.C. App. LEXIS 112 (2000), cert. denied, 351 N.C. 474, — S.E.2d — (2000).

ARTICLE 36.

Department of Administration.

Part 1. General Provisions.

§ 143-341. Powers and duties of Department.

The Department of Administration has the following powers and duties:

(1) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 38.

(2) Purchase and Contract:

a. To exercise those powers and perform those duties which were, at the time of the ratification of this Article, conferred by statute upon the former Division of Purchase and Contract.

(3) **(Effective until July 1, 2001)** Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings; and
2. All community college buildings requiring the estimated expenditure for construction or repair work for which public

§ 143-341(3) is set out twice. See notes.

bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

b1. To certify that a statement of needs pursuant to G.S. 143-6 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000).

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivision b., this subdivision does not apply to the design, construction, or renovation or projects by The University of North Carolina pursuant to G.S. 116-31.11.

(3) **(Effective July 1, 2001)** Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings; and
2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

b1. To certify that a statement of needs pursuant to G.S. 143-6 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000).

§ 143-341(3) is set out twice. See notes.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

(4) Real Property Control:

a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, description, source of title and current use of all land (including swamplands or marshlands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys may be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land may be prepared, or copies obtained where such maps or plats are available.

b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space and floor plans of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.

c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.

d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

d1. To require all State departments, institutions, and agencies to use State-owned office space instead of negotiating or renegotiating leases for rental of office space. Any lease entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and the Council of State.

The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than May 1 of each year on leased office space.

e. To make all sales of real property (including marshlands or swamplands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G.S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamplands or marshlands shall be dealt with in the manner required by the Constitution and statutes.

f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State; provided that if the proposed reallocation is of land with an appraised value of at least twenty-five thousand dollars ($25,000), the reallocation may only be made after consultation with the Joint Legislative Commission on Governmental Operations. The authority granted in this paragraph shall not apply to the State Legislative Building and grounds or to the Legislative Office Building and grounds.

h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.

i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded instruments which conveyed title to or from the State or any State agency or officer reindexed, where necessary, to show the State of North Carolina or grantor or grantee, as the case may be, and the cost of such reindexing shall be paid from the State Land Fund.

j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.

k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.

l. To manage and control the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to Chapter 146 of the General Statutes.

m. To contract for or approve all contracts for all appraisals and surveys of real property for all State agencies; provided, however, this provision shall not apply to appraisals and surveys obtained in connection with the acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation.

n. To petition for the annexation of state-owned lands into any municipality.

o. To provide that no fee, other than reimbursement of actual costs incurred and actual revenues lost by the State, shall be charged when State buildings are made available to a production company for a production. As used in this subdivision, the term "production company" has the meaning provided in G.S. 105-164.3.

(5) Administrative Analysis:

a. To study the organization, methods, and procedures of all State agencies, to formulate plans for improvements in the organization, methods, and procedures of any agency studied, and to advise and assist any agency studied in effecting improvements in its organization, methods, and procedures.

b. To report to the Governor its findings and recommendations concerning improvements in the organization, methods, and procedures of any State agency, when such improvements cannot be effected by the cooperative efforts of the Department and the agency concerned.

c. To submit to the Governor for transmittal to the General Assembly recommended legislation where such legislation is necessary to effect improvements in the organization, methods, and procedures of any State agency.

(6) State and Regional Planning:

a. To assist the Director of the Budget in reviewing the capital improvements needs and requests of all State agencies, and in preparing a coordinated biennial capital improvements budget and longer range capital improvements programs.

b. In cooperation with State agencies and other public and private agencies, to collect, analyze, and keep up-to-date a comprehensive collection of economic and social data pertinent to State planning, which shall be available to State and local governmental agencies and private agencies.

c. To coordinate and review all planning activity relative to federal government requirements for general statewide or regional comprehensive program planning.

d. To make economic analyses, studies, and projections and to advise the Governor on courses of action desirable for the maintenance of a sound economy.

e. To encourage and assist in the development of the planning process within State and local governmental agencies.

f. To assist State agencies by providing them with basic information and technical assistance needed in preparing their short-range and long-range programs.

g. To develop and maintain liaison and cooperative arrangements with federal, interstate, State, and private agencies and organizations in the interest of obtaining information and assistance with respect to State and regional planning.

h. To develop and maintain a comprehensive plan for the development of the State, representing the coordinated efforts and contributions of all participating planning groups.

i. In cooperation with the counties, the cities and towns, the federal government, multi-state commissions and private agencies and organizations, to develop a system of multi-county, regional planning districts to cover the entire State, and to assist in preparing for those districts comprehensive development plans coordinated with the comprehensive development plan for the State.

(7) Development Programs:

a. To participate in development programs, to enter into contracts, formulate plans and to do all things necessary to implement development programs in any area of the State.

b. To accept, receive and disburse, in furtherance of its functions, any funds, grants and services made available by the federal government and its agencies, any county, municipality, private or civic sources.

(8) General Services:

a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.

b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.

c. To provide necessary night watchmen for the public buildings and grounds.

d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.

e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.

f. Struck out by Session Laws 1959, c. 68, s. 3.

g. To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the Secretary, to make application for and procure a post-office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Secretary may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.

h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.
3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement purposes, and except those motor vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency purposes.
4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department. The Department shall ensure that state-owned vehicles are not normally replaced until they have been driven for 90,000 miles or more.
5. Upon proper requisition, proper showing of need for use on State business only, and proper showing of proof that all persons who will be driving the motor vehicle have valid drivers' licenses, to assign suitable transportation, either on a temporary or permanent basis, to any State employee or agency. An agency assigned a motor vehicle may not allow a person to operate that motor vehicle unless that person displays to the agency and allows the agency to copy that person's valid driver's license. Notwithstanding G.S. 20-30(6), persons or agencies requesting assignment of motor vehicles may photostat or otherwise reproduce drivers' licenses for purposes of complying with this subpart.

As used in this subpart, "suitable transportation" means the standard vehicle in the State motor fleet, unless special towing provisions are required by the employee or agency. The Department may not assign any employee or agency a motor vehicle that is not suitable. The Department shall not approve requests for vehicle assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non-job-related reason. The Department shall not assign "special use" vehicles, such as four-wheel drive vehicles or law enforcement vehicles, to any agency or individual except upon written justification, verified by historical data, and accepted by the Secretary.

6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.

   The amount allocated and charged by the Department of Administration to State agencies to which transportation is furnished shall be at least as follows:

   I. Pursuit vehicles and full size four-wheel drive vehicles $.24/mile.
   II. Vans and compact four-wheel drive vehicles — $.22/mile.
   III. All other vehicles — $.20/mile.

7. To adopt, with the approval of the Governor, reasonable rules for the efficient and economical operation, maintenance, repair, and replacement, as limited in paragraph 4. of this subdivision, of all state-owned motor vehicles under the control of the Department, and to enforce those rules; and to adopt, with the approval of the Governor, reasonable rules regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules. The Department, with the approval of the Governor, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules adopted by the Department pursuant to this paragraph. Any person who violates a rule adopted by the Department and approved by the Governor is guilty of a Class 1 misdemeanor.

7a. To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a, "state-owned passenger motor vehicle" includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data. The Department shall not assign any state-owned motor vehicle that may be used for commuting other than those authorized by the procedure prescribed in this subdivision.

A State-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose the individual routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. Each agency, other than the Department of Transportation, that has a vehicle assigned to it or has an employee to whom a vehicle is assigned shall submit a quarterly report to the Division of Motor Fleet Management on the miles driven during the quarter by the assigned vehicle. The Division of Motor Fleet Management shall review the report to verify that each motor vehicle has been driven at the minimum allowable rate. If it has not and if the department by whom the individual to which the car is assigned is employed or the agency to which the car is assigned cannot justify the lower mileage for the quarter, the permanent assignment shall be revoked immediately. The Department of Transportation shall submit an annual report to the Division of Motor Fleet Management on the miles driven during the year by vehicles assigned to the Department or to employees of the Department. If a vehicle included in this report has not been driven at least 12,600 miles during the year, the Department of Transportation shall review the reasons for the lower mileage and decide whether to terminate the assignment. The Division of Motor Fleet Management may not revoke the assignment of a vehicle to the Department of Transportation or an employee of that Department for failure to meet the minimum mileage requirement unless the Department of Transportation consents to the revocation.

Every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between the individual's official work station and his or her home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be for 20 days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation, which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the General Fund. Commuting, for purposes of this paragraph, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Management. Also, this paragraph does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses with over 20 person capacities, (vi) ambulances, (vii) [Repealed]. (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that are used in undercover work and are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Services regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans between their official work stations and their homes, who are not required to reimburse the State for these trips.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a State-owned passenger motor vehicle, pickup truck or van to any individual who:

I. Uses the vehicle for other than official business except in accordance with the commuting rules;

II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;

III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;

IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him or her and does not cure the deficiency within 30 days of receiving a request to do so;

V. Abuses the vehicle; or

VI. Violates other rules or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the approval of the Governor, may revoke this delegation of authority.

Prior to adopting rules under this paragraph, the Secretary of Administration may consult with the Advisory Budget Commission.

Notwithstanding the provisions of this section and G.S. 14-247, the Department of Administration may allow the organization sanctioned by the Governor's Council on Physical Fitness to conduct the North Carolina State Games to use State trucks and vans for the State Games of North Carolina. The Department of Administration shall not charge any fees for the use of the vehicles for the State Games. The State shall incur no liability for any damages resulting from the use of vehicles under this provision. The organization that conducts the State Games shall carry liability insurance of not less than one million dollars ($1,000,000) covering such vehicles while in its use and shall be responsible for the full cost of repairs to these vehicles if they are damaged while used for the State Games.

8. To adopt and administer rules for the control of all state-owned passenger motor vehicles and to require State agencies to keep all records and make all reports regarding motor vehicle use as the Secretary deems necessary.
9. To acquire motor vehicle liability insurance on all State-owned motor vehicles under the control of the Department.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.
11. To report annually to the General Assembly on any rules adopted, amended or repealed under paragraphs 3, 7, or 7a of this subdivision.

j. To establish and operate central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.

k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.

l. To provide necessary information service for visitors to the Capitol.

m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor.

(9) Repealed by Session Laws 1989, c. 239, s. 2.

(10) Block Grants. — To establish and maintain a block grants manual that will ensure uniform administration of block grant funds. The manual shall be a comprehensive source of reference for all general and statewide administrative procedures for block grant funds. The manual shall contain the applicable procedures for: the contents of an application, which shall be as simple as possible; the awarding of or contracting with block grant funds; auditing, which shall, to the extent possible, promote the use of single audits of grantees; the ensuring of civil rights compliance by grantees; and monitoring.

(11) Energy-related matters. — To exercise those powers and perform those duties prescribed in Article 1 of Chapter 113B and Part 1 of Article 3B of Chapter 143 of the General Statutes and Parts 2 and 3 of this Article. (1957, c. 215, s. 2; c. 269, s. 1; 1959, c. 683, ss. 2-4; c. 1326; 1963, c. 1, s. 5; 1965, c. 1023; 1969, c. 1144, s. 2; 1971, c. 1097, s. 3; 1975, c. 399, ss. 1, 2; c. 879, s. 46; 1979, c. 136, s. 1; c. 544; 1979, 2nd Sess., c. 1137, s. 38; 1981, c. 300; c. 859, ss. 48-51; 1981 (Reg. Sess., 1982), c. 1282, s. 62; 1983, c. 267, s. 1; c. 717, s. 74; c. 761, ss. 58, 151, 173, 174; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 122; 1985, c. 479, ss. 168, 170, 174; c. 757, ss. 174, 175, 177; c. 791, s. 51; 1985 (Reg. Sess., 1986), c. 955, ss. 94, 94.1; 1987, c. 738, ss. 43-45, 47(a); c. 827, s. 220; c. 874; 1987 (Reg. Sess., 1988), c. 1086, s. 34(b); 1989, c. 58, s. 2; c. 239, s. 2; 1991, c. 542, s. 10; c. 689, s. 22; 1993, c. 539, s. 1030; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 97, s. 1; c. 402, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 10.2; 1997-412, s. 6; 1998-45, s. 1; 2000-140, s. 76(g); 2000-153, s. 2.)

Editor's Note. —
Session Laws 2000-3, s. 3(f), provides that notwithstanding G.S. 143-341(3)a.2., G.S. 143-341(3) applies only to funds provided by Session Laws 2000-3, the Michael K. Hooker Higher Education Facilities Financing Act, for construction or renovation of community college buildings requiring an estimated expenditure of more than two hundred fifty thousand dollars ($250,000). The Michael K. Hooker Higher Education Facilities Financing Act, in part, authorizes the issuance of general obliga-

tion bonds of the state to provide grants to community colleges for capital improvements.

Effect of Amendments. —

Session Laws 2000-140, s. 76(g), effective September 30, 2000, added subdivision (11).

Session Laws 2000-153, s. 2, effective August 2, 2000, added subdivision (4)o.

CASE NOTES

Stated in State v. Coastland Corp., 134 N.C. App. 269, 517 S.E.2d 655 (1999), cert. denied, 351 N.C. 111, — S.E.2d — (1999).

§§ 143-345.10 through 143-345.12: Reserved for future codification purposes.

Part 2. Stocks of Coal and Petroleum Fuels.

§ 143-345.13. Reporting of stocks of coal and petroleum fuels.

The Department of Administration may, with the prior express approval of the Energy Policy Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils, and propane for resale within the State, file with the Department of Administration, on forms prepared by the Department, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by the supplier, including the supplier's current inventory and stock of coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. The reports and the information contained therein shall be proprietary information available only to regular employees of the Department of Administration, except that aggregate tables or schedules consolidating information from the reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time the reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that the reports be filed only at such times as the Energy Policy Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Administration is authorized and empowered to petition the district court, Division of the General Court of Justice, in the county in which the principal office or place of business of the supplier is located, for a mandatory injunction compelling the supplier to file the report. (2000-140, s. 76(i).)

Editor's Note. — Session Laws 2000-140, s. 76(*l*), made this Part effective September 30, 2000.

§ 143-345.14. Authority to collect data; administration and enforcement; confidentiality.

(a) The Department of Administration shall have the authority to obtain from prime suppliers of petroleum products specific petroleum supply data concerning State-level sales and projected sales by month for North Carolina that is currently reported on the federal Form EIA-782C, "Monthly Report of Petroleum Products Sold in States for Consumption" or its successor, at such time that these data requirements are not being met through any federal reporting procedure. The petroleum products subject to this reporting requirement are: finished gasoline (all grades), #1 distillate, kerosene, #2 fuel oil, #2 diesel fuel, aviation gasoline (finished), kerosene-type jet fuel, naphtha-type jet fuel, #4 fuel, residual fuel oil (less than or equal to one percent sulfur), residual fuel oil (greater than one percent sulfur), propane (consumer grade). The authority to collect energy data from suppliers of petroleum products into North Carolina, that is granted to the Department of Administration in this section, shall be limited to the petroleum volume data that is reported on the Form EIA-782C or its successor.

(b) "Prime suppliers" shall be defined as those suppliers which make the first sale of the named product into North Carolina, excluding jobbers, distributors, and retail dealers.

(c) The Department of Administration shall adopt rules and regulations for the administration of this data collection program and the Attorney General and the law enforcement authorities of the State and its political subdivisions shall enforce the provisions of this section and all orders, rules, and regulations promulgated thereunder. Any enforcement action may be brought upon the relation of the Department of Administration or the direction of the Attorney General.

(d) Any person or corporation who willfully refuses to provide the petroleum supply data in accordance with the conditions described herein, or who knowingly or willfully submits false information in any reports required herein or refuses to file any reports shall be guilty of a Class 1 misdemeanor.

(e) Any civil action brought to enforce the provisions of this section shall be brought in the Superior Court of Wake County or in the superior court of the county in which the acts or practices constituting a violation occurred or are occurring.

(f) The Department of Administration shall keep confidential any individually identifiable energy information to the extent necessary to comply with the confidentiality requirements of the reporting agency, and any such information shall not be subject to the public disclosure requirements of G.S. 132-6. "Individually identifiable energy information" shall be defined as any individual record or portion of a record or aggregated data containing energy information about a person or persons obtained from any source, the disclosure of which could reasonably be expected to reveal information about a specific person. (2000-140, s. 76(i).)

§ 143-345.15: Reserved for future codification purposes.

Part 3. Business Energy Improvement Program.

§ 143-345.16. Short title.

This Part shall be known as the Business Energy Improvement Program. (2000-140, s. 76(i).)

Editor's Note. — Session Laws 2000-140, s. 76(*l*), made this Part effective September 30, 2000.

§ 143-345.17. Legislative findings and purpose.

The General Assembly finds and declares that it is in the best interest of the citizens of North Carolina to promote and encourage energy efficiency within the State's industrial and commercial base in order to conserve energy, promote economic competitiveness, and expand employment in the State. (2000-140, s. 76(i).)

§ 143-345.18. Lead agency; powers and duties.

(a) For the purposes of this Part, the Department of Administration is designated as the lead State agency in matters pertaining to industrial and commercial energy conservation.

(b) The Department shall have the following powers and duties with respect to this Part:

(1) To provide industrial and commercial concerns doing business in North Carolina with information and assistance in undertaking energy conserving capital improvement projects to enhance industrial and commercial capacity.

(2) To establish a revolving fund within the Department for the purpose of providing secured loans in amounts not greater than five hundred thousand dollars ($500,000) per business entity to install energy-efficient capital improvements within businesses located within or translocating to North Carolina. In providing these loans, priority shall be given to businesses already located in the State.

(3) To work with appropriate State and federal agencies to develop and implement rules and regulations to facilitate this program.

(c) The annual interest rate charged for the use of the funds from the revolving fund established pursuant to subdivision (b)(2) of this section shall be one-half of the 90-day rate for United States Treasury Bills, not to exceed five percent (5%) per annum, excluding other fees required for loan application review and origination. The term of any loan originated under this section may not be greater than seven years.

(d) In accordance with the terms of the Stripper Well Settlement, administrative expenses for activities under this section shall be limited to five percent (5%) of funds appropriated for this purpose. (2000-140, s. 76(i).)

Article 36A.

State Employee Incentive Bonus Program.

§ 143-345.24. Incentive Bonus Review Committee.

(a) The Incentive Bonus Review Committee, hereinafter "Review Committee", shall consist of nine members, as follows:

(1) The State Coordinator.

(2) A representative of the Office of State Budget, Planning, and Management.

(3) A representative of the Office of State Personnel.

(4) A representative of The University of North Carolina.

(5) A representative of the Department of Justice.

(6) A representative of the Department of Labor.

(7) One State employee appointed by the Speaker of the House of Representatives.
(8) One State employee appointed by the President Pro Tempore of the Senate.
(9) One State employee appointed by the Governor upon the recommendation of the State Employees Association of North Carolina, Inc.

(b) The duties of the Review Committee shall include:
(1) Responsibility for receiving from the various agency coordinators recommendations on suggestion and innovation implementation plans.
(2) Determining the impact of a suggestion or innovation on State government services by judging the monetary savings, increased revenues, or improved quality of services generated by a suggestion or innovation.
(3) Ensuring that the State employee incentive bonus process does not result in a negative impact on services provided to taxpayers by State government.

(c) All administrative, management, clerical, and other functions and services required by the Review Committee shall be supplied by the Department of Administration. The Department of Administration and the Review Committee shall report annually to the Joint Legislative Commission on Governmental Operations on the administration of the State Employee Incentive Bonus Program. (1997-513, s. 2; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, in subdivision (a)(2), substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

Article 49A.

Equal Employment Practices.

§ 143-422.1. Short title.

CASE NOTES

Cited in Lemons v. US Air Group, Inc., 43 F. Supp. 2d 571 (M.D.N.C. 1999); Buser v. Southern Food Serv., 73 F. Supp. 2d 556 (M.D.N.C. 1999).

§ 143-422.2. Legislative declaration.

CASE NOTES

Public Policy Exception to At-Will Employment. — This section did not assist a plaintiff in establishing a claim based on the "public policy exception" to North Carolina's general rule of at-will employment. DeWitt v. Mecklenburg County, 73 F. Supp. 2d 589 (W.D.N.C. 1999).

North Carolina does not recognize a claim against a supervisor in his or her individual capacity under this section. Cox v. Indian Head Indus., 187 F.R.D. 531 (W.D.N.C. 1999).

Evidence Insufficient. — The plaintiff who suffered from rhinitis was unable to prove that he was handicapped and that he was terminated based upon the alleged handicap pursuant to this section where the defendant submitted evidence that his termination was based upon work performance. Simmons v. Chemol Corp., — N.C. App. —, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000).

Plaintiff's claim of sexual harassment on the job was denied under this section because neither the North Carolina Supreme Court nor the North Carolina Court of Appeals has recognized a private cause of action under the North Carolina Equal Employment Practices Act (NEEPA). Most courts have applied the NCEEPA only to common law wrongful discharge claims or in connection with other specific statutory remedies. Smith v. First Union Nat'l Bank, 202 F.3d 234 (4th Cir. 2000).

Construction. — The Employment Act, enacted in 1977, and The Handicapped Act, enacted in 1985, although enacted at different times, relate to the same subject matter, employment discrimination against handicapped persons, and must be construed together to ascertain legislative intent. McCullough v. Branch Banking & Trust Co., — N.C. App. —, 524 S.E.2d 569, 2000 N.C. App. LEXIS 17 (2000).

A discussion of reasonable accommodations under N.C. Gen. Stat. § 168A-3(9) and (10) is irrelevant where plaintiff's claim is based on wrongful discharge in violation of public policy under this section. Simmons v. Chemol Corp., — N.C. App. —, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000).

Article 66.

Health Care Purchasing Alliance Act.

§§ 143-621 through 143-639: Repealed by Session Laws 2000-67, s. 21.2, effective December 31, 2000.

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Former §§ 143-637 to 143-639 had been reserved for future codification purposes.

Article 74.

North Carolina Government Competition Act.

§§ 143-710 through 143-714: Reserved for future codification purposes.

Article 75.

Tobacco Trust Fund.

§ 143-715. Policy; purpose.

The General Assembly finds:

(1) For many years, the State and its prosperity have been supported by its agricultural economy and particularly by the tobacco-related segment of the agricultural economy. The Master Settlement Agreement is expected to cause significant economic hardship upon the tobacco-related segment of the agricultural economy in that it is expected to result in reduced demand, sales, and prices for tobacco as an agricultural product.

(2) Tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses are entitled to indemnification for the adverse economic effects in the State resulting from the Master Settlement Agreement, tobacco producers, allotment holders, and persons engaged in tobacco-related businesses are entitled to compensation for the economic losses resulting from lost quota in this State, and tobacco producers are entitled to compensation for the decline in value of tobacco-related personal property assets and declining market conditions in this State resulting from the Master Settlement

Agreement, to the extent that funds are available in the Tobacco Trust Fund to address those purposes.

(3) Even in the absence of the Master Settlement Agreement, the tobacco-related segment of the State's economy is experiencing severe economic hardship as it confronts a national decline in the use of, and demand for, tobacco products, which decline is expected to continue. At present, the tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses are facing an economic crisis that threatens their health and survival. Therefore, in addition to indemnification and compensation for losses in this State resulting from the Master Settlement Agreement, the public interest will be served by the funding of qualified agricultural programs that support, foster, encourage, and facilitate a strong agricultural economy in North Carolina. To the extent that funds are available in the Tobacco Trust Fund, expenditure of those funds to finance qualified agricultural programs is in the public interest.

(4) It is a public purpose for these funds to be expended in this manner, and it is public service for these persons to accept these funds to the end that conditions of unemployment and fiscal distress may be alleviated or avoided, more stable local economies may be created, local tax bases may be stabilized and maintained, natural resources may be optimally used, and the general public may be benefited. (2000-147, s. 3.)

Cross References. — For the Health and Wellness Trust Fund, see § 147-86.30 et seq.

Editor's Note. — Session Laws 2000-147, s. 9, made this Article effective August 2, 2000.

Session Laws 2000-147, s. 8(a)-(c), provides:

"(a) Interpretation of Act.--The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

"(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

"(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-147, s. 8(d), contains a severability clause.

§ 143-716. Definitions.

The following definitions apply in this Article:

(1) Commission. — The Tobacco Trust Fund Commission.

(2) Compensatory programs. — Programs developed by the Commission to identify, locate, compensate, and indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses who have suffered actual economic losses in this State due to lost quota, the decline in value of tobacco-related personal property assets, and declining market conditions resulting from the Master Settlement Agreement or declines in the tobacco-related segment of the State's economy.

(3) Fund. — The Tobacco Trust Fund.

(4) Master Settlement Agreement. — The settlement agreement between certain tobacco manufacturers and the states, as incorporated in the consent decree entered in the action of State of North Carolina v. Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.

(5) National Tobacco Grower Settlement Trust. — The trust established by tobacco companies to provide payments to tobacco growers and allotment holders in 14 states for the purposes of ameliorating

potential adverse economic consequences of likely reduction in demand, sales, and prices for tobacco as an agricultural product as a result of the Master Settlement Agreement.

(6) Qualified agricultural programs. — Programs developed by the Commission to support and foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy, particularly the segment adversely affected by the Master Settlement Agreement, with the objective of alleviating and avoiding unemployment, preserving, and increasing local tax bases, and encouraging the economic stability of participants in the State's agricultural economy. Examples of qualified agricultural programs include programs to finance the modernization of farming equipment, programs to finance the conversion of existing equipment to conform to environmental and other regulatory requirements, and programs to finance the conversion or replacement of equipment in order to cultivate crops that are more profitable than are currently being cultivated.

(7) Tobacco product component business. — An individual, partnership, limited liability company, corporation, or other commercial entity that engages in the manufacture of component products for use in the manufacture of tobacco products.

(8) Tobacco-related business. — An individual, partnership, limited liability company, corporation, or other commercial entity that provides products or services used directly in (i) the production of tobacco, or (ii) support of the business of the production or sale of tobacco. The term does not include the manufacturing of tobacco products or the sale of tobacco products at wholesale or retail.

(9) Tobacco-related employment. — Employment in a tobacco-related business, or in the manufacturing of tobacco products or the component products used in the manufacture of tobacco products. The term does not include persons employed in the sale of tobacco products at wholesale or retail. (2000-147, s. 3.)

§ 143-717. Commission.

(a) Creation. — The Tobacco Trust Fund Commission is created. The Commission shall be administratively located within the Department of Agriculture and Consumer Services but shall exercise its powers independently of the Commissioner of Agriculture and the Department. All administrative expenses of the Commission shall be paid from the Fund.

(b) Membership. — The Commission shall consist of 18 members. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. The members shall be appointed as follows:

(1) The Governor shall make the following appointments:
  a. A flue-cured tobacco farmer.
  b. A flue-cured tobacco farmer.
  c. A person in or displaced from tobacco-related employment.
  d. An at-large appointee.
  e. An at-large appointee.
  f. An at-large appointee.

(2) The President Pro Tempore of the Senate shall make the following appointments:
  a. A flue-cured tobacco farmer.
  b. A flue-cured tobacco farmer.
  c. A burley allotment holder who is also a burley tobacco farmer.

d. An at-large appointee.
e. An at-large appointee.
f. An at-large appointee.

(3) The Speaker of the House of Representatives shall make the following appointments:
a. A flue-cured tobacco farmer.
b. A flue-cured allotment holder who is not also a flue-cured tobacco farmer.
c. A burley tobacco farmer.
d. An at-large appointee.
e. An at-large appointee.
f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State. It is the intent of the General Assembly that at least one-half of the members of the Commission be tobacco farmers.

Except as provided for the initial members under subsection (c) of this section, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term. A member may be removed from office for cause by the authority that appointed that member.

(c) Initial Membership; Staggering. — To provide for a staggered membership, the members initially appointed to the Commission shall be appointed to staggered terms. Of the initial appointments to the Commission, the members initially appointed pursuant to sub-subdivisions (b)(1)a., (1)b., (2)d., and (3)d. of this section shall serve one-year terms ending on June 30, 2001. The members initially appointed pursuant to sub-subdivisions (b)(2)c., (2)e., (3)a., and (3)e. shall serve two-year terms ending on June 30, 2002. The members initially appointed pursuant to sub-subdivisions (b)(1)c., (1)d., (1)e., (2)b., and (3)c. of this section shall serve three-year terms ending June 30, 2003. The remaining members initially appointed pursuant to subsection (b) of this section shall serve four-year terms ending June 30, 2004.

(d) Officers. — The Commission shall elect from its membership a chair, vice-chair, and other officers as necessary for two-year terms beginning July 1 at the first meeting of the Commission held on or after July 1 of every even-numbered year. The vice-chair may act for the chair in the absence of the chair as authorized by the Commission.

(e) Frequency of Meetings. — The Commission shall meet at least quarterly each year and may hold special meetings at the call of the chair or a majority of members. The Governor shall call the initial meeting of the Commission.

(f) Quorum; Majority. — Ten members shall constitute a quorum of the Commission. The Commission may act upon a majority vote of the members of the Commission on matters involving the disbursement of funds and personnel matters properly before the Commission. On all other matters, the Commission may act by majority vote of the members of the Commission at a meeting at which a quorum is present.

(g) Per Diem and Expenses. — The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members shall be paid from the Fund.

(h) Conflict of Interest. — Members of the Commission shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest, except that G.S.

14-234(a) shall not apply to an application for or the receipt of a grant or other financial assistance award by a member of the Commission from the Fund created under this Article, or an entity in which a member of the Commission has an interest, if both of the following conditions are met:

(1) A member does not vote on, participate in the deliberation of, or otherwise attempt through his or her official capacity to influence the vote on, a grant or other financial assistance award by the Commission to the member.
(2) The Commissioner of Agriculture determines that any award to a member is in accordance with general criteria adopted by the Commission for the distribution of funds from the Fund.

(i) Limit on Operating and Administrative Expenses. — No more than two and one-half percent (2 ½%) of the annual receipts of the Fund for the fiscal year beginning July 1 or a total sum of one million dollars ($1,000,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Commission and its staff. All administrative expenses of the Commission shall be paid from the Fund. (2000-147, s. 3.)

Editor's Note. — Subsection (i) was enacted as subsection (h) by Session Laws 2000-147, s. 3; it was redesignated at the direction of the Revisor of Statutes.

§ 143-718. Powers and duties.

The Commission shall have the following powers and duties:

(1) To administer the provisions of this Article.
(2) To develop compensatory programs and qualified agriculture programs, including guidelines and criteria for eligibility for and disbursement of funds, the forms of direct and indirect economic assistance to be awarded, and procedures for applying for and reviewing applications for assistance from the Fund. In developing guidelines and criteria for eligibility and disbursement of funds, the Commission may consult with and otherwise obtain assistance from the State and local offices of the Farm Service Agency and other agencies of the United States Department of Agriculture.
(3) To provide financial assistance to eligible recipients, in carrying out compensatory programs and qualified agricultural programs.
(4) To hire staff for the administration of the Fund.
(5) To contract with other persons to assist in the administration of the Commission's programs.
(6) To accept gifts or grants from other sources.
(7) To adopt rules to implement this Article. (2000-147, s. 3.)

§ 143-719. Tobacco Trust Fund; creation; investment.

(a) Fund Established. — The Tobacco Trust Fund is established in the Office of the State Treasurer. The Fund shall be used to provide financial assistance in accordance with this Article.

(b) Fund Earnings, Assets, and Balances. — The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest the assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the chair of the Commission, pursuant to the directives of the Commission. (2000-147, s. 3.)

§ 143-720. Benefits and administration of Fund for compensatory programs.

(a) Funds held in the Fund may be expended on compensatory programs as provided in this section.

(b) The Fund may provide direct and indirect financial assistance, in accordance with criteria established by the Commission and to the extent allowed by law, to accomplish the following:

(1) Indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses from the adverse economic effects in this State of the Master Settlement Agreement.
(2) Compensate tobacco producers, allotment holders, and persons engaged in tobacco-related businesses for economic loss resulting from lost quota and compensate tobacco producers for the decline in value of tobacco-related personal property assets and declining market conditions resulting from the Master Settlement Agreement in this State.
(3) Compensate individuals displaced from tobacco-related employment in this State as a result of the adverse economic effects of the Master Settlement Agreement.
(4) Compensate tobacco product component businesses that are (i) adversely impacted by the Master Settlement Agreement and that (ii) need financial assistance to retool machinery or equipment or to retrain workers, in order to convert to the production of new products or nontobacco use of existing products, or to effect other similar changes.

(c) Only tobacco producers, persons engaged in tobacco-related businesses, individuals displaced from tobacco-related employment, and tobacco product component businesses in this State, and holders of North Carolina tobacco allotments are eligible to apply for and receive assistance pursuant to subsection (b) of this section. Direct payments made to tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses shall be based on losses resulting in 1998 and thereafter. Lost quota shall be a primary determinative factor in calculating the amount of compensable economic loss for tobacco producers, allotment holders, and persons engaged in tobacco-related businesses.

(d) The Commission shall determine the priority of awards among the categories in subsection (b) of this section and within each of those categories.

(e) Financial assistance awards shall be for no more than one year at a time. An award may be renewed annually, without limitation.

(f) The Commission may require applicants to provide copies of documents necessary to determine compensable economic loss.

(g) In no event shall the amount paid to a tobacco producer or allotment holder pursuant to this Article, when combined with the amount received through the National Tobacco Grower Settlement Trust, exceed the compensable economic loss of the producer or allotment holder.

(h) The Commission may consider the criteria used for National Tobacco Grower Settlement Trust payments and may correspond with the National Tobacco Grower Settlement Trust certification entity to ensure that tobacco farmers and allotment holders are treated fairly. (2000-147, s. 3.)

§ 143-721. Benefits and administration of Fund for qualified agricultural programs.

(a) Funds held in the Fund may be expended on qualified agricultural programs as provided in this section.

(b) In implementing qualified agricultural programs, the Commission shall endeavor to identify those areas of the tobacco-related segment of the State's economy in need of assistance to be provided by the Fund in order to assure the continued vitality and solvency of those areas. The Commission shall endeavor to select for funding qualified agricultural programs that will have the greatest favorable impact on the long-term health of the tobacco-related economy of the State.

(c) The benefits of qualified agricultural programs are not limited to persons suffering economic loss resulting from the Master Settlement Agreement, but these programs shall be designed to foster, support, and assist the tobacco-related segment of the agricultural economy.

(d) The Commission may solicit and accept proposals from agencies and departments of the State, including institutions of The University of North Carolina, local units of government, the federal government, and members of the private sector for qualified agricultural programs to be funded with money held in the Fund. (2000-147, s. 3.)

§ 143-722. Reporting.

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and the chairs of the House and Senate Appropriations Committees regarding the implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Commission on Governmental Operations. A written copy of the report shall also be sent to the Legislative Library by November 1 each year.

(b) Any non-State corporation, organization, or institution that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S 143-6.1. (2000-147, s. 3.)

§ 143-723. Open meetings; public records; audit.

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Fund and the Commission, and the Fund and the Commission shall be subject to audit by the State Auditor as provided by law. The Commission shall reimburse the State Auditor for the actual cost of the audit. (2000-147, s. 3.)

Chapter 143B.

Executive Organization Act of 1973.

ARTICLE 1.

General Provisions.

Part 1. In General.

§ 143B-2. Interim applicability of the Executive Organization Act of 1973.

The Executive Organization Act of 1973 shall be applicable only to the following named departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration

(9) Department of Commerce
(10) Department of Juvenile Justice and Delinquency Prevention. (1973, c. 476, s. 2; c. 620, s. 9; c. 1262, ss. 10, 86; 1975, c. 716, s. 5; c. 879, s. 46; 1977, c. 70, s. 22; c. 198, s. 21; c. 771, s. 4; 1989, c. 727, s. 218(121); c. 751, s. 7(18); 1991 (Reg. Sess., 1992), c. 959, s. 37; 1997-443, ss. 11A.118(a), 11A.119(a); 2000-137, s. 4(ll).)

Effect of Amendments. — Session Laws 2000-137, s. 4.(*ll*), effective July 20, 2000, added subdivision (10) and made a minor punctuation change.

§ 143B-6. Principal departments.

In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:
(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce
(10) Community Colleges System Office
(11) Department of Juvenile Justice and Delinquency Prevention. (1973, c. 476, s. 6; c. 620, s. 9; c. 1262, ss. 10, 86; 1975, c. 716, s. 5; c. 879, s. 46; 1977, c. 70, s. 23; c. 198, s. 22; c. 771, s. 4; 1979, 2nd Sess., c. 1130, s. 3; 1989, c. 727, s. 218(122); c. 751, s. 7(19); 1991 (Reg. Sess., 1992), c. 959, s. 38; 1997-443, ss. 11A.118(a), 11A.119(a); 1999-84, s. 23; 2000-137, s. 4(mm).)

Effect of Amendments. — Session Laws 2000-137, s. 4.(mm), effective July 20, 2000, added subdivision (11) and made a minor punctuation change.

ARTICLE 2.

Department of Cultural Resources.

Part 1. General Provisions.

§ 143B-49. Department of Cultural Resources — creation, powers and duties.

Editor's Note. — Session Laws 2000-138, s. 17.1, effective July 1, 2000, provides: "(a) There is hereby established the 1898 Wilmington Race Riot Commission. The Commission shall be located within the Department of Cultural Resources.

"(b) The purpose of the Commission shall be to develop a historical record of the 1898 Wilmington Race Riot. In developing such a record, the Commission shall gather information, including oral testimony from descendants of those affected by the riot or others, examine documents and writings, and otherwise take such actions as may be necessary or proper inaccurately identifying information having historical significance to the 1898 Wilmington Race Riot, including the economic impact of the riot on African-Americans in this State.

"(c) The Commission shall consist of 13 members, each of whom shall serve a two-year term. Commission members shall be appointed on or before September 1, 2000, as follows:

"(1) The President Pro Tempore of the Senate shall appoint three members.

"(2) The Speaker of the House of Representatives shall appoint three members.

"(3) The Governor shall appoint three public members, one of whom shall be a historian.

"(4) The Mayor and City Council of the City of Wilmington shall appoint two members.

"(5) The New Hanover County Commissioners shall appoint two members.

"The Commission shall terminate on December 31, 2002.

"(d) A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms in seats appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

"(e) The Commission may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from participating in the official business of the Commission until the charges have been resolved.

"(f) Members of the Commission shall not receive per diem or reimbursement for travel or subsistence.

"(g) The Commission's officers shall consist of two cochairs, a vice-chair, and other officers deemed necessary by the Commission to carry out the purposes of this Article. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall appoint the cochairs of the Commission. All other officers shall be elected by the Commission. All officers shall serve for two-year terms and shall serve until their successors are elected and qualified.

"(h) The Commission shall meet at least quarterly to conduct business as authorized in subsection (b) of this section. A majority of Commission members shall constitute a quorum.

"(i) The Department of Cultural Resources shall provide necessary clerical and administrative support services to the Commission.

"(j) The Commission may submit to the General Assembly an interim report of its findings and recommendations. The Commission shall submit to the General Assembly a final report of its findings and recommendations no later than December 31, 2002. The final report may include suggestions for a permanent marker or memorial of the riot and whether to designate the event as a historic site."

Session Laws 2000-138, s. 17.2 directs the Department of Cultural Resources to support the activities of the 1898 Wilmington Race Riot Commission.

Part 3. Art Museum Building Commission.

§§ 143B-58 through 143B-61.1: Repealed by Session Laws 2000-140, s. 78, effective July 21, 2000.

Part 27A. Roanoke Island Commission.

§ 143B-131.6. Roanoke Island Commission — Members; terms; vacancies; expenses; officers.

(a) The Commission shall consist of 24 voting members appointed as follows:

(1) Six members appointed by the Governor;
(2) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, at least two of whom reside in Dare County;
(3) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, at least two of whom reside in Dare County; and
(4) The following persons, or their designees, ex officio:
   a. The Governor;

b. The Attorney General;
c. The Secretary of the Department of Cultural Resources;
d. The Secretary of the Department of Transportation;
e. The Chair of the Dare County Board of Commissioners; and
f. The Mayor of Manteo.

(b) Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint three members for a term of two years and three members for a term of three years.
(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall initially appoint three members for a term of two years and three members for a term of three years.
(3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall initially appoint three members for a term of two years and three members for a term of three years.

Initial terms shall commence on October 1, 1994.

(c) The Governor shall appoint a chair biennially from among the membership of the Commission. The initial term of the chair shall commence on October 1, 1994. The Commission shall elect from its membership a vice-chair, a secretary, and treasurer to serve two-year terms. The Commission in its discretion may appoint a historian to serve at its pleasure. Initial terms shall commence on October 1, 1994.

(d) A vacancy in the Commission resulting from the resignation of a member or otherwise, shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(f) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Part.

(g) The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than two times a year.

(h) A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(i) The Commission shall make its recommendations by March 15 of each year that terms expire for appointments for terms commencing July 1 of that year; provided the initial appointments for terms commencing October 1, 1994, shall be made upon recommendation of the Roanoke Island Historical Association. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a); 2000-181, s. 2.4.)

Effect of Amendments. — Session Laws 2000-181, s. 2.4, effective August 2, 2000, in subsection (i), substituted "March 15" for "September 15" and substituted "July 1" for "November 1."

Part 29. Veterans' Memorial Commission.

§ 143B-133.1. Powers of Commission.

(a) The Commission shall cause to be erected on the Capitol Grounds a monument to the veterans of World War I, World War II, and the Korean War.

(b) The Commission may, in its discretion, hire any person or persons to design, construct, and erect the monument, and shall choose its location on the Capitol Grounds, in accordance with the review procedures of the North Carolina Historical Commission as set forth in Chapter 100 of the General Statutes, and without regard to Article 8 of Chapter 143 of the General Statutes, G.S. 143B-373, or G.S. 147-12(12).

(c) Further, when a designer is selected and awarded a contract by the Commission to construct and erect the memorial, the Commission shall so advise, in writing, the Office of State Budget, Planning, and Management of the total amount of the contract, a schedule of payments to be executed, if required, including any particular conditions upon which final acceptance of the Memorial and payment to the designer shall be made. Upon receipt of this document, the Office of State Budget, Planning, and Management shall cause disbursements to be made from the Reserve established by Section 3 of Chapter 971, Session Laws of 1983, in accordance with the Commission's contractual obligations. (1987, c. 779, s. 1; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1, effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" twice in subsection (c).

Article 3.

Department of Health and Human Services.

Part 1. General Provisions.

§ 143B-137: Repealed by Session Laws 1997-443, s. 11A.2.

Editor's Note. — Session Laws 2000-67, s. 11.23(b), as amended by Session Laws 2000-138, s. 15.1, provides: "The Department, in consultation with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, shall study whether a new division of developmental disabilities should be established in the Department. Not later than January 1, 2001, the Department shall report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Senate Appropriations Committee on Human Resources.

§ 143B-137.1. Department of Health and Human Services — duties.

Cross References. — As to establishment of a Spay/Neuter Program in the Department of Health and Human Services, see § 19A-60 et seq. As to report by the Division of Social Services on the activities of the State Child Fatality Review Team, see § 143B-150.20(h).

Editor's Note. — Child Residential Treatment Services Program. Session Laws 2000-67, ss. 11.19(a)-(d), provide: "(a) The Department of Health and Human Services shall establish the Child Residential Treatment Services Program. The Program shall be implemented by the Department in consultation with the Office of Juvenile Justice (now the Department of Juvenile Justice and Delinquency Prevention) and other affected State agencies. The purpose of the Program is to provide appropriate and medically necessary residential treatment alternatives for children at risk of institutionalization or other out-of-home placement. Program funds shall be targeted for non-Medicaid eligible children and may also be used for Medicaid-eligible children. Program funds may also be used to expand the Child Mental Health Systems of Care Project. The Program shall include the following:

"(1) Behavioral health screenings for all children at risk of institutionalization or other out-of-home placement.

"(2) Appropriate and medically necessary residential treatment placements, including placements for youths needing substance abuse treatment services and for specialized populations such as deaf children, children with serious emotional disturbances, and sexually aggressive youth.

"(3) Multidisciplinary case management services, as needed.

"(4) A system of utilization review specific to the nature and design of the Program.

"(5) Mechanisms to ensure that children are not placed in department of social services custody for the purpose of obtaining mental health residential treatment services.

"(6) Mechanisms to maximize current State and local funds and to expand use of Medicaid funds to accomplish the intent of this Program.

"(7) Other appropriate components to accomplish the Program's purpose.

"(8) The Secretary of the Department of Health and Human Services may enter into contracts with residential service providers.

"(b) The Department shall not allocate funds appropriated for Program services until a Memorandum of Agreement has been executed between the Department and other affected State agencies. The Memorandum of Agreement shall address specifically the roles and responsibilities of the various departmental divisions and affected State agencies involved in the administration, financing, care, and placement of children at risk of institutionalization or other out-of-home placement. The Department shall not allocate funds appropriated in this act for the Program until Memoranda of Agreement between local departments of social services and area mental health programs, and the Administrative Office of the Courts, and the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention), as appropriate, are executed to effectuate the purpose of the Program. The Memoranda of Agreement shall address issues pertinent to local implementation of the Program.

"(c) Notwithstanding any other provision of law to the contrary, services under the Child Residential Treatment Services Program are not an entitlement for non-Medicaid eligible children served by the Program.

"(d) The Department of Health and Human Services, in conjunction with the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention) and other affected agencies, shall report on the following:

"(1) The number and other demographic information of children served.

"(2) The amount and source of funds expended to implement the Program.

"(3) Information regarding the number of children screened, specific placement of children, and treatment needs of children served.

"(4) The average length of stay in residential treatment, transition, and return to home.

"(5) The number of children diverted from institutions or other out-of-home placements such as training schools and State psychiatric hospitals.

"(6) Recommendations on other areas of the Program that need to be improved.

"(7) Other information relevant to successful implementation of the Program.

"The Department shall submit a progress report on implementation of the Program not later than February 1, 2001, and a final report not later than May 1, 2002, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division."

<u>Funds for Child and Adolescent Residential Unit at Murdoch Center.</u> Session Laws 2000-67, ss. 11.20(a)-(c), provide: "(a) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of one million two hundred thousand dollars ($1,200,000) for the 2000-2001 fiscal year shall be used as follows:

"(1) To develop and operate a six-bed short-term residential unit to meet the needs of autistic children statewide whose behaviors place them at serious risk of institutionalization. The unit shall be developed within the Murdoch Mental Retardation Center and supported by specialized staff within the Murdoch Mental Retardation Center; and

"(2) To develop and operate a four-bed residential program for autistic children statewide whose behaviors place them at serious risk of institutionalization. The program may offer short-term diagnostic/prescriptive services or comprehensive interventions in order to transition children back to their homes and communities. The program shall be developed and supported by staff from the Murdoch Mental Retardation Center.

"(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of three hundred twenty-six thousand dollars ($326,000) for the 2000-2001 fiscal year shall be used to provide residential services for children with autism.

"(c) The Department shall submit progress reports on December 1, 2000, and on April 1, 2001, on its compliance with this section. The Department shall submit a final report on January 1, 2002. The reports shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division."

Services to Children at Risk for Institutionalization or Other Out-of-Home Placement. Session Laws 2000-67, ss. 11.21(a), (b), provide: "(a) In order to ensure that children at risk for institutionalization or other out-of-home placement are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these children:

"(1) Provide only those treatment services that are medically necessary.

"(2) Implement utilization review of services provided.

"(3) Effective immediately:

"a. Eliminate formerly court-mandated Willie M. or Eligible Violent and Assaultive Children Program administration, infrastructure, categorical funding designation, and eligibility determination process at the State and local level;

"b. Identify savings realized from elimination of Program administration and infrastructure at the State and local level;

"c. Adopt the following guiding principles for the provision of services:

"1. Service delivery system must be outcome-oriented and evaluation-based.

"2. Services should be delivered as close as possible to the consumer's home.

"3. Services selected should be those that are most efficient in terms of cost and effectiveness.

"4. Services should not be provided solely for the convenience of the provider or the client.

"5. Families and consumers should be involved in decision making throughout treatment planning and delivery.

"d. Implement all of the following cost reduction strategies:

"1. Preauthorization for all services except emergency services.

"2. Levels of care to assist in the development of treatment plans.

"3. Clinically appropriate services.

"4. State review of individualized service plans for all children served to ensure that service plans focus on delivery of appropriate services rather than optimal treatment and habilitation plans.

"(4) Collaborate with other affected State agencies such as the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention) and the Administrative Office of the Courts, and with local departments of social services and area mental health programs to eliminate cost-shifting and facilitate cost-sharing among these governmental agencies with respect to the treatment and placement services.

"(b) The Department shall submit a progress report on implementation of this section not later than February 1, 2001, and a final report not later than May 1, 2002, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division."

Services to Multiply-Diagnosed Adults. Session Laws 2000-67, ss. 11.22(a)-(c), provide: "(a) In order to ensure that multiply-diagnosed adults are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these adults:

"(1) Provide only those treatment services that are medically necessary.

"(2) Implement utilization review of services provided.

"(3) Effective immediately:

"a. Eliminate formerly court-mandated Thomas S. Program administration, infrastructure, and categorical funding designation at the local level, while continuing to provide services to former Thomas S. clients and other multiply-diagnosed adults;

"b. Identify savings realized from elimination of Program administration and infrastructure.

"c. Adopt the following guiding principles for the provision of services:

"1. Service delivery system must be outcome oriented and evaluation based.

"2. Services should be delivered as close as possible to the consumer's home.

"3. Services selected should be those that are most efficient in terms of cost and effectiveness.

"4. Services should not be provided solely for the convenience of the provider or the client.

"5. Families and consumers should be involved in decision-making throughout treatment planning and delivery; and

"d. Implement all of the following cost reduction strategies:

"1. Preauthorization for all services except emergency services.

"2. Criteria for determining medical necessity.

"3. Clinically appropriate services.

"4. State review of (i) individualized service plans for all adults served to ensure that service plans focus on delivery of appropriate services rather than optimal treatment and habilitation plans, and (ii) staffing patterns of residential services.

"(b) No State funds shall be used for the purchase of single-family or other residential dwellings to house multiply-diagnosed adults.

"(c) The Department shall submit a progress report on implementation of this section not later than February 1, 2001, and a final report not later than May 1, 2002, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division."

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-138.1. Department of Health and Human Services — functions and organization.

Editor's Note. —
Session Laws 2000-67, s. 14.18(a)-(e), renames the State Energy Conservation Plan as the State Energy Efficiency Program. Effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Residential Energy Conservation Assistance Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Health and Human Services. Similarly, effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Energy Policy Council and State Energy Efficiency Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Administration. Effective July 1, 2000, all vacant positions in the Energy Division of the Department of Commerce are abolished.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

CASE NOTES

Cited in Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

Part 4A. Family Preservation Act.

§ 143B-150.5. Family Preservation Services Program established; purpose.

(a) There is established the Family Preservation Services Program of the Department of Health and Human Services. The Program shall be phased in over a four-year period, commencing with fiscal year 1991-92. By the end of the four-year phase-in period, and to the extent that funds are made available, locally-based family preservation services shall be available to all 100 counties. The Secretary of the Department of Health and Human Services shall be responsible for the development and implementation of the Family Preservation Services Program as established in this Part. In developing the Program the Secretary shall consider the advice and recommendations of the Advisory Committee on Family-Centered Services.

(b) The purpose of the Family Preservation Services Program is, where feasible and in the best interests of the child and the family, to keep the family unit intact by providing intensive family-centered services that help create, within the family, positive, long-term changes in the home environment.

(c) Family preservation services shall be financed in part through grants to local agencies for the development and implementation of locally-based family preservation services. Grants to local agencies shall be made in accordance with the provisions of G.S. 143B-150.6.

(d) The Secretary of the Department of Health and Human Services shall ensure the cooperation of the Division of Social Services, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Division of Medical Assistance, in carrying out the provisions of this Part. (1991, c. 743, s. 1; 1997-443, s. 11A.118(a); 2000-137, s. 4(z).)

Effect of Amendments. — Session Laws 2000-137, s. 4(z), effective July 20, 2000, deleted "the Division of Youth Services" following "Division of Social Services" in subsection (d).

§ 143B-150.6. Program services; eligibility; grants for local projects; fund transfers.

Editor's Note. —

Session Laws 2000-67, s. 5(*l*), effective July 1, 2000, appropriates $2,000,000 in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2000-2001 fiscal year, for the Intensive Family Preservation Services (IFPS) Program, to plan and implement a revised IFPS Program. Notwithstanding G.S. 143B-150.6, the Program is to provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Department is to reexamine the existing IFPS Program design to ensure the application of a standardized assessment and clear criteria for the determination of imminent risk of removal and to assess the education and skill levels required of staff. The Department is to issue a report to Senate and House appropriations committees and the Fiscal Research Division no later than April 1, 2001.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-150.7. Advisory Committee on Family-Centered Services; establishment, membership, compensation.

(a) There is established the Advisory Committee on Family-Centered Services within the Department of Health and Human Services.

(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) Four members representing the Department of Health and Human Services, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom shall represent the Division of Maternal and Child Health;

(1a) One member representing the Department of Juvenile Justice and Delinquency Prevention;

(2) Two members, one from each of the following: the Administrative Office of the Courts and the Department of Public Instruction;

(3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;

(4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;

(5) One member representing the schools of social work of The University of North Carolina;

(6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and

(7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of Health and Human Services shall serve as the Chair of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the Department of Juvenile Justice and Delinquency Prevention, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

(c) To the extent that funds are made available, members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(d) A majority of the Committee shall constitute a quorum for the transaction of its business.

(e) The Committee may use funds allocated to it to employ an administrative staff person to assist the Committee in carrying out its duties. Clerical and other support staff services needed by the Committee shall be provided by the Secretary of Health and Human Services. (1991, c. 743, s. 1; 1997-443, s. 11A.103; 1998-202, s. 4(w); 2000-137, s. 4(aa).)

Effect of Amendments. —
Session Laws 2000-137, s. 4.(aa), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subdivision (b)(1a) and in the last paragraph of subsection (b).

Part 4B. State Child Fatality Review Team.

§ 143B-150.20. State Child Fatality Review Team; establishment; purpose; powers; duties; report by Division of Social Services.

(a) There is established in the Department of Health and Human Services, Division of Social Services, a State Child Fatality Review Team to conduct in-depth reviews of any child fatalities which have occurred involving children and families involved with local departments of social services child protective services in the 12 months preceding the fatality. Steps in this in-depth review shall include interviews with any individuals determined to have pertinent information as well as examination of any written materials containing pertinent information.

(b) The purpose of these reviews shall be to implement a team approach to identifying factors which may have contributed to conditions leading to the fatality and to develop recommendations for improving coordination between local and State entities which might have avoided the threat of injury or fatality and to identify appropriate remedies. The Division of Social Services shall make public the findings and recommendations developed for each fatality reviewed relating to improving coordination between local and State entities. These findings shall not be admissible as evidence in any civil or administrative proceedings against individuals or entities that participate in child fatality reviews conducted pursuant to this section. The State Child Fatality Review Team shall consult with the appropriate district attorney in accordance with G.S. 7B-2902(d) prior to the public release of the findings and recommendations.

(c) The State Child Fatality Review Team shall include representatives of the local departments of social services and the Division of Social Services, a member of the local Community Child Protection Team, a member of the local child fatality prevention team, a representative from local law enforcement, a prevention specialist, and a medical professional.

(d) The State Child Fatality Review Team shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this subsection, including police investigative data, medical examiner investigative data, health records, mental health records, and social services records. The State Child Fatality Review Team may receive a copy of any reviewed materials necessary to the conduct of the fatality review. Any member of the State Child Fatality Review Team may share, only in an official meeting of the State Child Fatality Review Team, any information available to that member that the State Child Fatality Review Team needs to carry out its duties.

(e) Meetings of the State Child Fatality Review Team are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. However, the State Child Fatality Review Team may hold periodic public meetings to discuss, in a general manner not revealing confidential information about children and families, the findings of their reviews and their recommendations for preventive actions. Minutes of all public meetings, excluding those of closed sessions, shall be kept in compliance with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any executive session shall be sealed from public inspection.

(f) All otherwise confidential information and records acquired by the State Child Fatality Review Team, in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings except pursuant to an order of the court; and may only be disclosed as necessary to carry out the purposes of the State Child Fatality Review Team. In addition, all otherwise confidential information and records created by the State Child Fatality Review Team in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the State Child Fatality Review Team. No member of the State Child Fatality Review Team, nor any person who attends a meeting of the State Child Fatality Review Team, may testify in any proceeding about what transpired at the meeting, about information presented at the meeting, or about opinions formed by the person as a result of the meetings. This subsection shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

(g) Each member of the State Child Fatality Review Team and invited participant shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

(h) The Division of Social Services, Department of Health and Human Services, shall report to the members of the Senate Appropriations Committee on Human Resources, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the activities of the State Child Fatality Review Team including recommendations for changes in the statewide child protection system no later than October 1 of each year. (1998-202, s. 13(oo); 1998-212, s. 12.22(e); 1999-190, s. 4; 2000-67, s. 11.14(a).)

Editor's Note. —

The subsection designations were added at the direction of the Revisor of Statutes. In addition, the Revisor directed the codification of Session Laws 2000-67, s. 11.14(a) as subsection (h).

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 11.14(a), effective July 1, 2000, added subsection (h).

Part 5A. S.O.S. Program.

§ 143B-152.6. Cooperation of State and local agencies.

All agencies of the State and local government, including the Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program. (1994, Ex. Sess., c. 24, s. 30(a); 1997-443, s. 11A.118(a); 1998-202, s. 4(x); 2000-137, s. 4(bb).)

Effect of Amendments. —
Session Laws 2000-137, s. 4.(bb), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice."

Part 5B. Family Resource Center Grant Program.

§ 143B-152.14. Cooperation of State and local agencies.

All agencies of the State and local government, including the Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program. (1994, Ex. Sess., c. 24, s. 31(a); 1997-443, s. 11A.118(a); 1998-202, s. 4(y); 2000-137, s. 4(cc).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(cc), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice."

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Health and Human Services with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Health and Human Services shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Health and Human Services as provided in Chapter 108A of the General Statutes of the State of North Carolina.

(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the Department of Juvenile Justice and Delinquency Prevention, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48;

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services; and

e. For client assessment and independent case management pertaining to the functions of county departments of social services for public assistance programs authorized under paragraph a. of this subdivision.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;

b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, by promulgating rules and regulations in the following areas:

1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
3. Contracting for and purchasing services; and
4. Monitoring for effectiveness and compliance with State and federal law and regulations.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;

b. Repealed by Session Laws 1999-334, s. 3.5, effective October 1, 1999.

c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;

d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;

e. Repealed by Session Laws 1981, c. 562, s. 7.
f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Health and Human Services.

(8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, rates or fees for:
a. A fee schedule for the payment of the costs of necessary child care in licensed facilities and registered plans for minor children of needy families.
b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and
c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.
d. Child support enforcement services as defined by G.S. 110-130.1. (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7; 1977, 2nd Sess., c. 1219, ss. 26, 27; 1981, c. 275, s. 5; c. 562, s. 7; c. 961, ss. 1-3; 1983, c. 278, ss. 1, 2; c. 527, s. 2; 1985, c. 206; c. 479, s. 96; c. 689, s. 29f; 1991, c. 462, s. 1; c. 636, s. 19(d); c. 689, s. 105; c. 761, s. 28; 1993, c. 553, s. 46; 1995, c. 449, s. 4; c. 535, s. 32; 1997-443, s. 11A.118(a); 1997-456, s. 22; 1997-506, s. 55; 1998-202, s. 4(z); 1999-334, s. 3.5; 2000-111, s. 4; 2000-137, s. 4(dd); 2000-140, s. 99(a).)

Effect of Amendments. —

Session Laws 2000-111, s. 4, effective July 14, 2000, added subdivision (2)e, and made minor stylistic changes.

Session Laws 2000-137, s. 4(dd), July 20, 2000, made the same changes as Session Laws 2000-111, s. 4 as noted above.

Session Laws 2000-140, s. 99(a), effective July 21, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subdivision (2)c.

Part 7. Commission for the Blind.

§ 143B-157. Commission for the Blind — creation, powers and duties.

There is recreated the Commission for the Blind of the Department of Health and Human Services with the power and duty to adopt rules governing the conduct of the State's rehabilitative programs for the blind that are necessary to carry out the provisions and purposes of this Article.

(1) The Commission shall adopt rules that are necessary and desirable for the programs administered by the Department of Health and Human Services as provided in Chapter 111 of the General Statutes of North Carolina.

(2) Repealed by Session Laws 1993, c. 561, s. 89(a).

(3) The Commission shall adopt rules, not inconsistent with the laws of this State, that are required by the federal government for grants-in-aid for rehabilitative purposes for the blind that may be made available to the State from the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3a) The Commission shall review, analyze, and advise the Department regarding the performance of its responsibilities under the federal rehabilitation program in which the State participates, as it relates to the provision of services to the blind, particularly its responsibilities relating to the following:

a. Eligibility for the program;

b. The extent, scope, and effectiveness of the services provided; and

c. The functions performed by the Department that affect, or that have the potential to affect, the ability of individuals who are blind or visually impaired to achieve rehabilitative goals and objectives under the federal rehabilitation program;

(3b) The Commission shall advise the Department regarding preparation of applications, the State Plan, amendments to this plan, the State needs assessments, and the evaluations required by the federal rehabilitation program; and in partnership with the Department develop, agree to, and review State goals and priorities;

(3c) The Commission shall, to the extent feasible, conduct a review and analysis (i) of the effectiveness of, and consumer satisfaction with, the functions performed by the Department and other public and private entities responsible for performing functions for individuals who are blind or visually impaired, and (ii) of vocational rehabilitation services provided or paid for from funds made available through other public or private sources and provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals who are blind or visually impaired;

(3d) The Commission shall prepare and submit an annual report to the Governor, the Secretary, and the federal rehabilitation program, and make the report available to the public;

(3e) The Commission shall coordinate with other councils within the State, including the statewide Independent Living Council established under section 705 of the federal Rehabilitation Act, 29 U.S.C. § 720, et seq., the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1413(A)(12), the Council on Developmental Disabilities described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6024, the State Mental Health Planning

Council established pursuant to section 1916(e) of the Public Health Service Act, 42 U.S.C. § 300x-4(e), and the Commission on Workforce Development;

(3f) The Commission shall advise the Department and provide for coordination with, and establishment of working relationships between, the Department and the Independent Living Council;

(3g) The Commission shall prepare, in conjunction with the Department, a plan for the provision of those resources, including staff and other personnel, that are necessary to carry out the Commission's function under this Part. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan. The agreed-upon resources shall be provided pursuant to G.S. 143B-14. To the extent that there is a disagreement between the Commission and the Department with regard to the resources necessary to carry out the functions of the Commission required by this Part, the Governor shall resolve the disagreement. The Department or other State agency shall not assign any other duties to the staff and other personnel who are assisting the Commission in carrying out its duties that would create a conflict of interest;

(4) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina State Commission for the Blind shall remain in full force and effect unless and until repealed or superseded by action of the recreated Commission for the Blind. All rules adopted by the Commission shall be enforced by the Department of Health and Human Services. (1973, c. 476, s. 139; 1993, c. 561, s. 89(a); 1997-443, s. 11A.118(a); 2000-121, ss. 29, 30.)

Effect of Amendments. — Session Laws 2000-121, ss. 29 and 30, effective July 14, 2000, in sudivision (3b), substituted "amendments to this plan" for "the strategic plan, amendments to these plans" and inserted "and in partnership with the Department develop, agree to, and review State goals and priorities"; and in subdivision (3e), substituted "29 U.S.C. § 720" for "294 U.S.C. § 720," substituted "612(a)(21)" for "613(a)(12)," substituted "Council on Developmental Disabilities" for "State Planning Council," inserted "and the Commission on Workforce Development" and made a minor wording change.

§ 143B-158. Commission for the Blind.

(a) The Commission for the Blind of the Department of Health and Human Services shall consist of 13 members as follows:

(1) One representative of the Statewide Independent Living Council.

(2) One representative of a parent training and information center established pursuant to section 631(c) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1431(c).

(3) One representative of the State's Client Assistance Program.

(4) One vocational rehabilitation counselor who has knowledge of and experience in vocational rehabilitation services for the blind. A vocational rehabilitation counselor appointed pursuant to this subdivision shall serve as a nonvoting member of the Commission if the counselor is an employee of the Department of Health and Human Services.

(5) One representative of community rehabilitation program services providers.

(6) One current or former applicant for, or recipient of, vocational rehabilitation services.

(7) One representative of a disability advocacy group representing individuals who are blind.
(8) One parent, family member, guardian, advocate, or authorized representative of an individual who is blind, has multiple disabilities, and either has difficulty representing himself or herself or who is unable, due to disabilities, to represent himself or herself.
(9) One representative of business, industry, and labor.
(10) One representative of the directors of projects carried out under section 121 of the Rehabilitation Act of 1973, 29 U.S.C. § 741, as amended, if there are any of these projects in the State.
(11) One representative of the Department of Public Instruction.
(12) One representative of the Commission on Workforce Development.
(13) The Director of the Division of Services for the Blind shall serve as an ex officio, nonvoting member.

(b) The members of the Commission for the Blind shall be appointed by the Governor. The Governor shall appoint members after soliciting recommendations from representatives of organizations representing a broad range of individuals who have disabilities and organizations interested in those individuals. In making appointments to the Commission, the Governor shall consider, to the greatest extent practicable, the extent to which minority populations are represented on the Commission.

(c) A majority of Commission members shall be persons who are blind, as defined in G.S. 111-11. A majority of Commission members shall be persons who are not employed by the Division of Services for the Blind.

(d) The Commission for the Blind shall select a Chairperson from among its members.

(e) The term of office of members of the Commission is three years. The term of members appointed under subdivisions (1), (2), (3), and (4) of subsection (a) of this section shall expire on June 30 of years evenly divisible by three. The term of members appointed under subdivisions (5), (6), (7), and (8) of subsection (a) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (9), (10), (11), and (12) of subsection (a) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three.

(f) No individual may be appointed to more than two consecutive three-year terms. Upon the expiration of a term, a member shall continue to serve until a successor is appointed, as provided by G.S. 128-7. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(g) A member of the Commission shall not vote on any issue before the Commission that would have a significant and predictable effect on the member's financial interest. The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(h) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(i) A majority of the Commission shall constitute a quorum for the transaction of business.

(j) All clerical and other services required by the Commission shall be supplied by the Secretary of Health and Human Services. (1973, c. 476, s. 140; 1977, c. 581; 1993, c. 561, s. 89(b); 1997-443, s. 11A.118(a); 2000-121, s. 31.)

Editor's Note. — Session Laws 2000-121, s. 36, makes appointment to the Commission for the Blind and provides for staggered terms of three years.

Effect of Amendments. — Session Laws 2000-121, s. 31, effective July 14, 2000, rewrote the section and its catchline.

Part 9. Consumer and Advocacy Advisory Committee for the Blind.

§ 143B-163. Consumer and Advocacy Advisory Committee for the Blind — creation, powers and duties.

(a) There is hereby created the Consumer and Advocacy Advisory Committee for the Blind of the Department of Health and Human Services. This Committee shall make a continuing study of the entire range of problems and needs of the blind and visually impaired population of this State and make specific recommendations to the Secretary of Health and Human Services as to how these may be solved or alleviated through legislative action. The Committee shall examine national trends and programs of other states, as well as programs and priorities in North Carolina. Because of the cost of treating persons who lose their vision, the Committee's role shall also include studying and making recommendations to the Secretary of Health and Human Services concerning methods of preventing blindness and restoring vision.

(b) The Consumer and Advocacy Advisory Committee for the Blind shall advise all State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities, including the secretary, director and members of said boards, commissions, agencies, divisions, departments, schools, et cetera, on the needs of the citizens of the State of North Carolina who are now or will become visually impaired.

(c) The Consumer and Advocacy Advisory Committee for the Blind shall also advise every State board, commission, agency, division, department, school, corporation, or other State-administered associations or entity concerning sight conservation programs that it supervises, administers or controls.

(d) All State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities including the secretary, director and members of said State boards, agencies, departments, et cetera, which supervise, administer or control any program for or affecting the citizens of the State of North Carolina who are now or will become visually impaired shall inform the Consumer and Advocacy Advisory Committee for the Blind of any proposed change in policy, program, budget, rule, or regulation which will affect the citizens of North Carolina who are now or will become visually impaired. Said board, commission, et cetera, shall allow the Consumer and Advocacy Advisory Committee for the Blind, prior to passage, unless such change is made pursuant to G.S. 150B-21.1, an opportunity to object to the change and present information and proposals on behalf of the citizens of North Carolina who are now or will become visually impaired. This subsection shall also apply to all sight conservation programs of the State of North Carolina.

(e) Nothing in this statute shall prohibit a board, commission, agency, division, department, et cetera, from implementing any change after allowing the Consumer and Advocacy Advisory Committee for the Blind an opportunity to object and propose alternatives. Shifts in budget items within a program or administrative changes in a program required in the day-to-day operation of an agency, department, or school, et cetera, shall be allowed without prior consultation with said Committee. (1977, c. 842, s. 1; c. 1050; 1979, c. 973, s. 1; 1987, c. 827, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 44; 1997-443, s. 11A.118(a); 2000-121, s. 32.)

Effect of Amendments. — Session Laws 2000-121, s. 32, effective July 14, 2000, deleted "handicapped or" preceding "impaired" in subsection (b) and three times in subsection (d).

Part 10. North Carolina Medical Care Commission.

§ 143B-165. North Carolina Medical Care Commission — creation, powers and duties.

Editor's Note. —
Session Laws 2000-50, s. 2, effective June 30, 2000, provides: "Notwithstanding G.S. 150B-21.1(a), the Medical Care Commission shall adopt temporary rules for the purpose of defining the circumstances under which adult care homes may admit residents on a short-term basis for the purpose of caregiver respite and the rules that shall apply during the course of their stay. The Commission's authority to adopt temporary rules under this section expires on the date that permanent rules pertaining to the same subject matter adopted by the Commission as authorized under G.S. 143B-165(10) become effective."

Part 10B. Early Childhood Initiatives.

§ 143B-168.10. Early childhood initiatives; findings.

Editor's Note. —
Session Laws 2000-67, s. 11.28(e), repealed Session Laws 1999-237, s. 11.48(c), which had provided that notwithstanding any provision of this Part or any other provision of law or policy, the Department of Health and Human Services and the North Carolina Partnership for Children, Inc., was to jointly continue to implement the recommendations contained in the Smart Start Performance Audit prepared pursuant to Section 27A(1)b. of Chapter 324 of the 1995 Session Laws, as modified by Section 24.29 of Chapter 18 of the Session Laws, Second Extra Session 1996.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) The North Carolina Partnership shall have a Board of Directors consisting of the following 25 members:

a. The Secretary of Health and Human Services, ex officio, or the Secretary's designee;

b. Repealed by Session Laws 1997, c. 443, s. 11A.105.

c. The Superintendent of Public Instruction, ex officio, or the Superintendent's designee;

d. The President of the Community Colleges System, ex officio, or the President's designee;

e. Three members of the public, including one child care provider, one other who is a parent, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate;

f. Three members of the public, including one who is a parent, one other who is a representative of the faith community, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives;
g. Twelve members, appointed by the Governor. Three of these 12 members shall be members of the party other than the Governor's party, appointed by the Governor. Seven of these 12 members shall be appointed as follows: one who is a child care provider, one other who is a pediatrician, one other who is a health care provider, one other who is a parent, one other who is a member of the business community, one other who is a member representing a philanthropic agency, and one other who is an early childhood educator;
h. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.
h1. The Chair of the North Carolina Partnership Board shall be appointed by the Governor;
i. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.
j. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the Senate;
k. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the House of Representatives;
l. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the Senate; and
m. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the House of Representatives.

All members appointed to succeed the initial members and members appointed thereafter shall be appointed for three-year terms. Members may succeed themselves.

All appointed board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the North Carolina Partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the North Carolina Partnership regarding the disbursement of funds.

All ex officio members are voting members. Each ex officio member may be represented by a designee. These designees shall be voting members. No members of the General Assembly shall serve as members.

The North Carolina Partnership may establish a nominating committee and, in making their recommendations of members to be appointed by the General Assembly or by the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Majority Leader of the Senate, the Majority Leader of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Governor shall consult with and consider the recommendations of this nominating committee.

The North Carolina Partnership may establish a policy on members' attendance, which policy shall include provisions for reporting absences of at least three meetings immediately to the appropriate appointing authority.

Members who miss more than three consecutive meetings without excuse or members who vacate their membership shall be replaced by the appropriate appointing authority, and the replacing member shall serve either until the General Assembly and the Governor can appoint a successor or until the replaced member's term expires, whichever is earlier.

The North Carolina Partnership shall establish a policy on membership of the local board, which policy shall include the requirement that all local board members, other than any member appointed because of a position held by that individual, be residents of the county or the partnership region they are representing. No member of the General Assembly shall serve as a member of a local board. Within these requirements for local board membership, the North Carolina Partnership shall allow local partnerships that are regional to have flexibility in the composition of their boards so that all counties in the region have adequate representation.

All appointed local board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the partnership regarding the disbursement of funds.

(2) The North Carolina Partnership and the local partnerships shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected and shall approve the ongoing plans, programs, and services developed and implemented by the local partnerships and hold the local partnerships accountable for the financial and programmatic integrity of the programs and services. The North Carolina Partnership may contract at the State level to obtain services or resources when the North Carolina Partnership determines it would be more efficient to do so.

In the event that the North Carolina Partnership determines that a local partnership is not fulfilling its mandate to provide programs and services designed to meet the developmental needs of children in order to prepare them to begin school healthy and ready to succeed and is not being accountable for the programmatic and fiscal integrity of its programs and services, the North Carolina Partnership may suspend all funds to the partnership until the partnership demonstrates that these defects are corrected. Further, at its discretion, the North Carolina Partnership may assume the managerial responsibilities for the partnership's programs and services until the North Carolina Partnership determines that it is appropriate to return the programs and services to the local partnership.

(4) The North Carolina Partnership shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of State funds appropriated to it and to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The North Carolina Partnership may contract with outside firms to develop and implement the

standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the North Carolina Partnership pursuant to this subdivision.

(5) The North Carolina Partnership shall develop a regional accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of subsection (a) of this section. All local partnerships shall participate in the regional accounting and contract management system.

(6) The North Carolina Partnership shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.

(7) The North Carolina Partnership may adjust its allocations by up to ten percent (10%) on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local partnerships, the North Carolina Partnership shall consider whether the local partnerships are meeting the outcome goals and objectives of the North Carolina Partnership and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The North Carolina Partnership may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated "superior", "satisfactory", or "needs improvement".

The North Carolina Partnership may contract with outside firms to conduct the performance assessments of local partnerships.

(8) The North Carolina Partnership shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chairs of local partnerships' board of directors, and seven shall be staff of local partnerships. Members shall be chosen by the Chair of the North Carolina Partnership from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the North Carolina Partnership and shall establish a schedule of regular meetings. Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

(9) The North Carolina Partnership shall report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor on the ongoing progress of all the local partnerships' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide.

(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership.

(c) **(See editor's note for applicability)** The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars ($100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be audited as required by G.S. 143-6.1. Organizations subject to G.S. 159-34 shall be exempt from this requirement. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 324, s. 27A.1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(b); 1997-443, ss. 11.55(*l*), 11A.105; 1998-212, s. 12.37B(a), (b); 1999-84, s. 24; 1999-237, s. 11.48(a); 2000-67, s. 11.28(a).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

For applicability of subsection (c), see the editor's note in the main volume.

Effect of Amendments. —

Session Laws 2000-67, s. 11.28(a), effective July 1, 2000, inserted the second sentence in the seventh paragraph following subdivision (a)(1)m; added the last sentence in the first paragraph in subdivision (a)(3); rewrote subdivision (a)(5); and in subdivision (a)(7), inserted "by up to ten percent (10%)" at the beginning of the first paragraph and deleted the former second, third and fourth sentences regarding the amount of funding to be increased for each rating of local partnerships.

OPINIONS OF ATTORNEY GENERAL

Legislators Precluded from Serving on the Board of North Carolina Partnership for Children, Inc. — The separation of powers provision of the N.C. Constitution precludes legislators from serving as members of a private, non-profit corporation where the corporation is "a special instrumentality of government" created to implement specific legislation. See opinion of Attorney General to The Honorable John R. Gamble, Jr., N.C. House of Representatives, 1998 N.C.A.G. 34 (7/30/98).

§ 143B-168.13. Implementation of program; duties of Department and Secretary.

(a) The Department shall:

(1) Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.

(1a) Develop and conduct a statewide needs and resource assessment every third year, beginning in the 1997-98 fiscal year. This needs assessment shall be conducted in cooperation with the North Carolina Partnership and with the local partnerships. The data and findings of this needs assessment shall form the basis for annual program plans developed by local partnerships and approved by the North Carolina Partnership.

(2) Recodified as (a)(1a) by Session Laws 1998-212, s. 12.37B(a).

(2a) Repealed by Session Laws 1998-212, s. 12.37B(l), effective October 30, 1998.

(3) Provide technical and administrative assitance to local partnerships, particularly during the first year after they are selected under this Part to receive State funds. The Department, at any time, may authorize the North Carolina Partnership or a governmental or public entity to do the contracting for one or more local partnerships. After a local partnership's first year, the Department may allow the partnership to contract for itself.

(4) Adopt, in cooperation with the North Carolina Partnership, any rules necessary to implement this Part, including rules to ensure that State leave policy is not applied to the North Carolina Partnership and the local partnerships. In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the Department may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.

(5) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(c).

(6) Annually update its funding formula, in collaboration with the North Carolina Partnership for Children, Inc., using the most recent data available. These amounts shall serve as the basis for determining "full funding" amounts for each local partnership.

(b) Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(c); 1997-443, s. 11.55(m); 1998-212, s. 12.37B(a), (b); 2000-67, s. 11.28(b).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be knows as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 11.28.(b), effective July 1, 2000, inserted "in collaboration with the North Carolina Partnership for Children, Inc.," in subdivision (a)(6).

§ 143B-168.15. Use of State funds.

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships for direct services, seventy percent (70%) of the funds spent in each year shall be used in child care related activities and early childhood education programs that improve access to child care and early childhood education services, develop new child care and early childhood education services, and improve the quality of child care and early childhood education services in all settings.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated to support direct services for children, families, and providers shall not be used for major capital expenses unless the

North Carolina Partnership approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that local partnership. The funds approved for capital projects in any two consecutive fiscal years may not exceed ten percent (10%) of the total funds for direct services allocated to a local partnership in those two consecutive fiscal years.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.

(f) Local partnerships may carry over funds from one fiscal year to the next, subject to the following conditions:

(1) Local partnerships in their first year of receiving direct services funding may, on a one-time basis only, carry over any unspent funds to the subsequent fiscal year.

(2) Any local partnership may carry over any unspent funds to the subsequent fiscal year, subject to the limitation that funds carried over may not exceed the increase in funding the local partnership received during the current fiscal year over the prior fiscal year.

(g) Not less than thirty percent (30%) of the funds spent in each year of each local partnership's direct services allocation shall be used to expand child care subsidies. To the extent practicable, these funds shall be used to enhance the afford ability, availability, and quality of child care services as described in this section. The North Carolina Partnership may increase this percentage requirement up to a maximum of fifty percent (50%) when, based upon a significant local waiting list for subsidized child care, the North Carolina Partnership determines a higher percentage is justified. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 509, s. 97; 1996, 2nd Ex. Sess., c. 18, s. 24.29(e); 1997-443, s. 11.55(n); 1997-506, s. 60; 1998-212, s. 12.37B(a), (b); 1999-237, s. 11.48(o); 2000-67, ss. 11.28(c), 11.28(d).)

Editor's Note. —

Session Laws 1999-237, s. 11.48(i), as amended by Session Laws 2000-67, s. 11.28(g) provides: "The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the Program in each fiscal year of the biennium as follows: contributions of cash equal to at least fifteen percent (15%) and in-kind donated resources equal to no more than five percent (5%) for a total match requirement of twenty percent (20%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

"(1) Be verifiable from the contractor's records;

"(2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations;

"(3) Not include expenses funded by State funds;

"(4) Be supplemental to and not supplant preexisting resources for related program activities;

"(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives;

"(6) Be otherwise allowable under federal or State law;

"(7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership; and

"(8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

"The North Carolina Partnership for Children, Inc., shall establish uniform guidelines and reporting format for local partnerships to document the qualifying expenses occurring at the contractor level. Local partnerships shall monitor qualifying expenses to ensure they have occurred and meet the requirements prescribed in this subsection.

"Failure to obtain a twenty percent (20%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly."

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 11.28(c), effective July 1, 2000, rewrote subsection (b).

Session Laws 2000-67, s. 11.28(d), effective September 1, 2000, in subsection (g), inserted "of the funds spent in each year" in the first sentence, deleted the former third sentence, regarding priority for the use of the funds to augment the State's payment rate, and added the present third sentence.

Part 14C. Respite Care Program.

§ 143B-181.10. Respite care program established; eligibility; services; administration; payment rates.

(a) A respite care program is established to provide needed relief to caregivers of impaired adults who cannot be left alone because of mental or physical problems.

(b) Those eligible for respite care under the program established by this section are limited to those unpaid primary caregivers who are caring for people 60 years of age or older and their spouses, or those unpaid primary caregivers 60 years of age or older who are caring for persons 18 years of age or older, who require constant supervision and who cannot be left alone either because of memory impairment, physical immobility, or other problems that renders them unsafe alone.

(c) Respite care services provided by the programs established by this section may include:

(1) Counseling and training in the caregiving role, including coping mechanisms and behavior modification techniques;

(2) Counseling and accessing available local, regional, and State services;

(3) Support group development and facilitation;

(4) Assessment and care planning for the patient of the caregiver;

(5) Attendance and companion services for the patient in order to provide release time to the caregiver;

(6) Personal care services, including meal preparation, for the patient of the caregiver;

(7) Temporarily placing the person out of his home to provide the caregiver total respite when the mental or physical stress on the caregiver necessitates this type of respite.

Program funds may provide no more than the current adult care. An out of home placement is defined as placement in a hospital, skilled or intermediate nursing facility, adult care home, adult day health center, or adult day care center. Duration of the service period may extend beyond a year.

(d) The respite care program established by this section shall be administered by the Division of Aging consistent with the policies and procedures of the Older Americans Act. The programs shall be coordinated with other appropriate Divisions in the Department of Health and Human Services, and with agencies and organizations concerned with the delivery of services to frail older adults and their unpaid caregivers. The Division shall choose respite care provider agencies in accordance with procedures outlined under the Older Americans Act and shall include the following criteria: documented capacity to provide care, adequacy of quality assurance, training, supervision, abuse prevention, complaint mechanisms, and cost. All funds allocated by the Division pursuant to this section shall be allocated on the same basis as funding under the Older Americans Act.

(e) Funding for the Division of Aging to administer this program shall not exceed the percentage allowed for administration as provided in the Older Americans Act but shall not be less than that budgeted for administration in fiscal year 1988-89.

(f) Unless prohibited by federal law, caregivers receiving respite care services through the program established by this section shall pay for some of the services on a sliding scale depending on their ability to pay. The Division of Aging, in consultation with the Councils of Governments in each region, shall specify rates of payment for the services. (1985 (Reg. Sess., 1986), c. 1014, s. 7.1; 1989, c. 500, s. 96(a); c. 770, s. 63; 1991, c. 332, s. 1; 1995, c. 535, s. 34; 1997-443, s. 11A.118(a); 1998-97, s. 1; 2000-50, s. 1.)

Effect of Amendments. — Session Laws 1998-97, s.1, effective August 14, 1998, in the last paragraph in subsection (c), deleted "reimbursement rate for out of home placement" from the end of the first sentence. This provision had been due to expire on July 1, 2000. However, Session Laws 2000-50, s. 1, deleted the July 1, 2000 expiration date.

Article 6.

Department of Correction.

Part 5. Substance Abuse Advisory Council.

§ 143B-270. Substance Abuse Advisory Council.

(a) There is created a Substance Abuse Advisory Council to consult with the Secretary of the Department of Correction in the administration of the Substance Abuse Program.

(b) The Council shall be composed of nine members. Three members shall be appointed by the Speaker of the House of Representatives, three members by the President Pro Tempore of the Senate, and three members by the Governor. Of each set of three members, the appointing authority shall appoint one person who is a member of the recovering community, one other person who is a professional in the field of substance abuse services, and one other person who is a member of the public at large. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only. The Council shall elect its chairman annually.

(c) Members appointed shall hold office for a term of four years beginning on October 1, 1987, except that three of the initial appointees and these three appointees' immediate successors shall serve a term of two years, with the immediate successors' terms expiring on September 30, 1991.

(d) The Council shall meet at least once each quarter and at the call of the Secretary.

(e) Council members who are members of the General Assembly shall receive travel and subsistence allowances as provided in G.S. 120-3.1. Council members who are not members of the General Assembly shall receive travel and subsistence as provided in G.S. 138-5. (1987, c. 738, s. 111(d); 1991, c. 405, s. 2; 1995, c. 490, s. 55; 2000-140, s. 33.)

Effect of Amendments. — Session Laws 2000-140, s. 33, effective July 21, 2000, deleted the last sentence in subsection (c), which read "The Speaker, Lieutenant Governor, and Governor shall each select one of their initial appointees to serve a two-year term."

Article 6A.

North Carolina State-County Criminal Justice Partnership Act.

§ 143B-273.8. Duties of Department of Correction.

(a) In addition to those otherwise provided by law, the Department of Correction shall have the following duties:

(1) To provide technical assistance to applicants in developing, implementing, monitoring, evaluating, and operating community-based corrections programs.

(2) To enter into contractual agreements with county boards for the operation of community-based corrections programs and monitor compliance with those agreements.

(3) To act as an information clearinghouse regarding community-based corrections programs.

(4) To review plans of participating counties and to approve grants based on applications to assist them in the implementation and operation of community-based corrections programs.

(5) To develop policies and procedures for the disbursement of grant funds to participating counties on a reimbursement basis.

(6) To develop the minimum program standards, policies, and rules for community-based corrections programs.

(7) In instances of substantial noncompliance, the Secretary shall notify the board or boards of county commissioners, the county community corrections advisory board, and the chief administrator of the program in writing of the allegations and allow 60 days for a response. If an agreement is reached concerning a remedy, then the Secretary shall allow 30 days following that agreement for the remedy to be implemented. If the deficiencies are not corrected within this period, then the Secretary may, upon written notice, suspend any or all of the grant funds until compliance is achieved.

(b) The Department of Correction shall report by February 1 of each year to the Chairs of the Senate and House Appropriations Committees, the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections and Crime Control Oversight Committee on the status of the Criminal Justice Partnership Program. The report shall include the following information:

(1) The amount of funds carried over from the prior fiscal year;

(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;

(3) Any counties the Department anticipates will submit requests for new implementation grants;

(4) The number of counties submitting offender participation data via the electronic reporting system;
(5) An analysis of offender participation data received; and
(6) An update on efforts to ensure that all counties make use of the electronic reporting system. (1993, c. 534, s. 1; 1999-237, s. 18(d); 2000-67, s. 16.)

Editor's Note. —
Session Laws 1999-237, s. 18(d), as amended by Session Laws 2000-67, s. 16, was codified as subsection (b) of this section and the existing provisions designated as subsection (a) at the direction of the Revisor of Statutes.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-273.15. Funding formula.

Editor's Note. —
Session Laws 1999-237, ss. 18(a)-(c), as amended by Session Laws 2000-67, s. 16, provide that notwithstanding the funding formula set forth in G.S. 143B-273.15, appropriations made to the Department of Correction through the North Carolina State-County Criminal Justice Partnership Act for the 1999-2000 and 2000-2001 fiscal years shall be distributed to the counties as specified in G.S. 143B-273.15(2) only, and not as discretionary funds. The Department may also use funds from the State-County Criminal Justice Partnership Account in order to maintain the counties' allocations of nine million six hundred thousand dollars ($9,600,000) as provided in previous fiscal years. Appropriations not claimed or expended by the counties during the 1999-2000 and 2000-2001 fiscal years are to be distributed as specified in G.S. 143B-273.15(1). A single county may apply for discretionary funds under G.S. 143B-273.15(1) for a residential program that serves offenders from other counties; in order for those other counties to assign offenders to such a program, those counties shall include a residential component in an approved partnership plan. The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully-developed plan for each type of sanction.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Article 7.

Department of Environment and Natural Resources.

Part 1. General Provisions.

§ 143B-279.1. Department of Environment and Natural Resources — creation.

Editor's Note. —
Session Laws 2000-67, s. 13.7(a)-(f), directs the Department of Environment and Natural Resources to establish a one-stop environmental permit application assistance and tracking system pilot project for one year in at least two

regional offices, and to expand this program, to more than two offices during the 2000-2001 fiscal year if resources are available, and to a statewide program as soon as possible after the 2000-2001 fiscal year. As part of the project, the Department is to provide each person who submits an application for an environmental permit to one of the regional offices participating in the pilot project a time frame within which that applicant may expect a final decision regarding issuance or denial or a permit. The Department is to track the time required to process each complete environmental permit application received on or after July 1, 2000, as part of the pilot project and is to identify each permit that was issued or denied more than 90 days after receipt of a complete application and document reasons for delayed action. The Department is to issue a report, with recommendations, regarding permit time frames for all major permits issued by the Department to the Senate and House Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission by April 1, 2001. The Department may adopt temporary rules to implement s. 13.7.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-279.3. Department of Environment and Natural Resources — structure.

Editor's Note. —
Session Laws 2000-67, s. 23, effective July 1, 2000, consolidates the Office of State Budget and Management and the Office of State Planning into the Office of State Budget, Planning, and Management under the Office of the Governor. The Department of Environment and Natural Resources is to transfer the responsibility for development of topographic mapping through a cooperative agreement with the U.S. Geological Survey and funds to match federal funding under the agreement from the Divison of Land Resources to the Office of State Budget, Planning, and Management.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-279.9. (Effective October 1, 1999 until September 1, 2001) Land-use restrictions may be imposed to reduce danger to public health at contaminated sites.

(a) In order to reduce or eliminate the danger to public health or the environment posed by the presence of contamination at a site, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site where the contamination is located if the restrictions meet the requirements of this section. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards that the Secretary determines to be applicable to the site. Except as provided in subsection (b) of this section, if the remedial action is risk-based or will not require that the site meet current standards, as defined in G.S. 130A-310.31, the remedial action plan must include an agreement by the owner, operator, or other responsible party to record approved land-use restrictions that meet the requirements of this section as

§ 143B-279.9 has a postponed date. See notes.

provided in G.S. 143B-279.10. Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the contaminated site. Any land-use restriction may also be enforced by the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction.

(b) Subsection (a) of this section shall not apply to a risk-based remedial action plan for the cleanup of environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes. (1999-198, s. 1; 2000-51, s. 1.)

For this section as in effect September 1, 2001, see the main volume.

Editor's Note. —

Session Laws 2000-51, s. 3, directs the Environmental Review Commission to continue to study the application of land-use restrictions to the cleanup of environmental damage resulting from discharges and releases of petroleum from underground storage tanks through a stakeholder negotiation process, considering issues related to notice to current and future users of real property of any restrictions on the current and future use of the property, mechanisms to ensure compliance with those restrictions, notice to current and future users of real property of the existence of contamination in excess of current standards, and issues related to recordation in the register of deeds office of this information. The Commission is to report its findings and recommendations, including any legislative proposals, to the 2001 General Assembly.

Effect of Amendments. — Session Laws 2000-51, s. 1, effective retroactively to October 1, 1999, and expiring September 1, 2001, designated the existing paragraph as subsection (a) and added "Except as provided in subsection (b) of this section" to the beginning of the fourth sentence; and added subsection (b).

§ 143B-279.10. Recordation of contaminated sites.

(a) The owner of the real property on which a site is located that is subject to current or future use restrictions approved as provided in G.S. 143B-279.9 shall submit to the Department a survey plat as required by this section within 180 days after the owner is notified to do so. The survey plat shall identify areas designated by the Department, shall be prepared and certified by a professional land surveyor, and shall be entitled "NOTICE OF CONTAMINATED SITE". Where a contaminated site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

(1) The location and dimensions of any disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of contamination known to the owner of the site to exist on the site.

(3) Any restriction approved by the Department on the current or future use of the site.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds office in the county or counties in which the land is located within 15 days of the date on which the owner receives approval of the Notice from the Department.

(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the land.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, the owner may recover the reasonable costs thereof from any responsible party.

(e) When a contaminated site that is subject to current or future land-use restrictions is sold, leased, conveyed, or transferred, 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 is a contaminated site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Contaminated Site filed pursuant to this section shall, at the request of the owner of the land, be cancelled by the Secretary after the contamination has been eliminated or remediated to current standards, as defined in G.S. 130A-310.31. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the contamination has been eliminated, or that the contamination has been remediated to current standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice and on the grantee index in the name "Secretary of Environment and Natural Resources". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry. (1999-198, s. 1; 2000-51, s. 2.)

Editor's Note. —

Session Laws 2000-51, s. 3, directs the Environmental Review Commission to continue to study the application of land-use restrictions to the cleanup of environmental damage resulting from discharges and releases of petroleum from underground storage tanks through a stakeholder negotiation process, considering issues related to notice to current and future users of real property of any restrictions on the current and future use of the property, mechanisms to ensure compliance with those restrictions, notice to current and future users of real property of the existence of contamination in excess of current standards, and issues related to recordation in the register of deeds office of this information. The Commission is to report its findings and recommendations, including any legislative proposals, to the 2001 General Assembly.

Effect of Amendments. — Session Laws 2000-51, s. 2, effective retroactively to October 1, 1999, in subsection (f), in the first sentence, substituted "section shall" for "section may" and added "or remediated to current standards, as defined in G.S. 130A-310.31," and inserted "or that the contamination has been remediated to current standards" in the second sentence.

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission — creation; powers and duties.

Editor's Note. —

Session Laws 1997-392, s. 5, as amended by Session Laws 2000-19, s. 17, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until 30 June 2001."

Session Laws 2000-19, s. 20, contains a severability clause.

Session Laws 2000-19, s. 21, authorizes the Secretary of Environment and Natural Resources to study alternative dry-cleaning processes and equipment, evaluating the benefits and costs as well as the feasibility of installing and implementing these, and to make a final report to the Environmental Review Commission no later than September 1, 2001, with findings, recommendations, and any legislative proposals.

Session Laws 2000-19, s. 22, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001."

§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

(a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

(1) One who shall be a licensed physician with specialized training and experience in the health effects of environmental pollution;

(2) One who shall, at the time of appointment, be actively connected with the Commission for Health Services or local board of health or have experience in health sciences;

(3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;

(4) One who shall, at the time of appointment, be a registered engineer with specialized training and experience in water supply or water or air pollution control;

(5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife conservation activities of the State;

(6) One who shall, at the time of appointment, have special training and scientific expertise in hydrogeology or groundwater hydrology;

(7) Three members interested in water and air pollution control, appointed from the public at large;

(8) One who shall, at the time of appointment, be actively employed by, or recently retired from, an industrial manufacturing facility and knowledgeable in the field of industrial air and water pollution control;

(9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government;

(10) One who shall, at the time of appointment, have special training and scientific expertise in air pollution control and the effects of air pollution; and

(11) One who shall, at the time of appointment, have special training and scientific expertise in freshwater, estuarine, marine biological, or ecological sciences.

(b) Members appointed by the Governor shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Governor may reappoint a member of the Commission to an additional term if, at the time of the reappointment, the member qualifies for membership on the Commission under subsection (a) of this section.

(b1) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(b2) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(b3) A majority of the Commission shall constitute a quorum for the transaction of business.

(b4) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources.

(c) Nine of the members appointed by the Governor under this section shall be persons who do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Chapter. The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section, giving due regard to the requirements of federal legislation, and for this purpose may promulgate rules, regulations or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(d) In addition to the members designated by subsection (a) of this section, the General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly shall serve terms of two years. (1973, c. 1262, s. 20; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, ss. 5, 6; 1981 (Reg. Sess., 1982), c. 1191, s. 19; 1989, c. 315; c. 727, s. 218(129); 1995, c. 490, s. 18; 1997-381, s. 1; 1997-443, s. 11A.119(a); 1998-217, s. 17; 2000-172, ss. 4.1, 4.2.)

Editor's Note. —

Session Laws 2000-172, s. 8.3 provides: "Section 4.1 of this act is effective upon ratification and applicable retroactively to all appointments by the Governor to the Environmental Management Commission." The act was ratified July 10, 2000.

Session Laws 2000-172, s. 8.2, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-172, s. 4.1 rewrote subsection (b); and designated the former second through fifth paragraphs in subsection (b) as present subsections (b1) through (b4), respectively. For effective date and applicability of this amendment, see the editor's note.

Session Laws 2000-172, s. 4.2, effective August 2, 2000, in subsection (d), inserted "of this section" in the first sentence, and rewrote the former last two sentences as the present last sentence.

Part 5D. Marine Fisheries Commission.

§ 143B-289.51. Marine Fisheries Commission — creation; purposes.

OPINIONS OF ATTORNEY GENERAL

The Marine Fisheries Commission has the power to regulate North Carolina vessels in the Exclusive Economic Zone (EEZ), and the Marine Patrol has the power to cite those vessels in the EEZ; the Marine Patrol has both subject matter jurisdiction and territorial jurisdiction over State registered vessels in the EEZ, subject to certain restrictions. See opinion of Attorney General to Colonel B. M. Rivenbark, N.C. Marine Patrol Division of Marine Fisheries, 1998 N.C.A.G. 16 (3/9/98).

Part 22. North Carolina Zoological Park Council.

§ 143B-336.1. Special Zoo Fund.

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas, and for the replacement of tram equipment as required to maintain adequate service to the public. The Special Zoo Fund may also be used to match private funds which are raised for these purposes. Funds may be expended for these purposes by the Department of Environment and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget, Planning, and Management. The Department of Environment and Natural Resources shall provide an annual report to the Office of State Budget, Planning and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section. (1989, c. 752, s. 154; 1995, c. 324, s. 26.11; 1997-443, s. 11A.119(a); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in two places.

Part 30. State Infrastructure Council.

§ 143B-344.30. Council established; purpose; members; terms of office; quorum; compensation; termination.

Editor's Note. —
Session Laws 2000-156, s. 2.1, effective August 1, 2000, directs the State Infrastructure Council, with the cooperation of the Department of Environment and Natural Resources and the Rural Economic Development Center, Inc., to study the geographic distribution of loans and grants from the proceeds of the Clean Water Bonds and determine the extent to which geographic disparities and inequities of distribution exist, as well as to develop a plan to redress the disparities or inequities identified. No later than December 1, 2000, the Council is to report the results of its evaluation, any

administrative actions taken, and any legislative proposals to address disparities and inequities to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division.

ARTICLE 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-346. Department of Transportation — purpose and functions.

CASE NOTES

Quoted in Davis v. J.M.X., Inc., — N.C. App. —, 528 S.E.2d 56, 2000 N.C. App. LEXIS 309 (2000).

Part 9. North Carolina Rail Council.

§ 143B-362. North Carolina Rail Council — creation; powers and duties.

Editor's Note. —
Session Laws 1999-237, s. 27.25(a)-(*l*), established the Future of the North Carolina Railroad Study Commission, and Session Laws 2000-138, ss. 8.1-8.3 and Session Laws 2000-146, ss. 12, 13, amended portions of these provisions. Session Laws 2000-138, s. 8.3, amended Session Laws 1999-237, s. 27.25(k), to make the Commission permanent. Session Laws 1999-237, ss. 27.25(a)-(k), have been codified as Chapter 120, Article 28, §§ 120-245 to 120-255, at the direction of the Revisor of Statutes.

ARTICLE 9.

Department of Administration.

Part 2A. North Carolina Progress Board.

§ 143B-372.3. Staff.

(a) The Chancellor of North Carolina State University shall appoint an Executive Director who shall serve at the pleasure of the Chancellor. The Executive Director shall report to the North Carolina Progress Board and the Chancellor. The Executive Director shall hire or contract with support staff, who shall work at the pleasure of the Executive Director.

(b) The Office of State Budget, Planning, and Management shall also provide support, information, reports, and other assistance to the North Carolina Progress Board as requested.

(c) Repealed by Session Laws 1999-237, s. 10.12(a), effective June 30, 1999. (1995, c. 117, s. 1; 1999-237, s. 10.12(a); 2000-140, s. 93.1(g).)

Effect of Amendments. —
Session Laws 2000-140, s. 93.1.(g), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of

State Budget and Management and the Office of State Planning" in subsection (b).

Part 7. Youth Councils.

§ 143B-387.1. North Carolina Youth Legislative Assembly Fund.

The North Carolina Youth Legislative Assembly Fund is created as a special and nonreverting fund. North Carolina Youth Legislative Assembly registration fees, gifts, donations, or contributions shall be credited to the North Carolina Youth Legislative Assembly Fund.

The fund shall be used solely to support planning and execution of the North Carolina Youth Legislative Assembly. (2000-67, s. 23.1.)

Editor's Note. — Session Laws 2000-67, s. 28.5, made this section effective July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-406. North Carolina State Commission of Indian Affairs — duties; use of funds.

OPINIONS OF ATTORNEY GENERAL

Actions by local units of government purporting to "recognize" Indian groups as Indian tribes have no binding impact on the Commission with regard to its statutory duties or its process for official State recognition of Indian tribes; however, a county may adopt such a resolution to urge the State to grant such recognition. See opinion of Attorney General to Mr. R. Glen Peterson General Counsel North Carolina Department of Administration, 1998 N.C.A.G. 42 (10/15/98).

Part 18. North Carolina Internship Council.

§ 143B-417. North Carolina Internship Council — creation; powers and duties.

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:
  a. Office of the Governor
  b. Department of Administration
  c. Department of Correction
  d. Department of Cultural Resources
  e. Department of Revenue
  f. Department of Transportation
  g. Department of Environment and Natural Resources
  h. Department of Commerce
  i. Department of Crime Control and Public Safety

j. Department of Health and Human Services
k. Office of the Lieutenant Governor
l. Office of the Secretary of State
m. Office of the State Auditor
n. Office of the State Treasurer
o. Department of Public Instruction
p. Repealed by Session Laws 1985, c. 757, s. 162.
q. Department of Agriculture and Consumer Services
r. Department of Labor
s. Department of Insurance
t. Office of the Speaker of the House of Representatives
u. Justices of the Supreme Court and Judges of the Court of Appeals
v. Community Colleges System Office
w. Office of State Personnel
x. Office of the Senate President Pro Tempore
y. Department of Juvenile Justice and Delinquency Prevention;

(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in subdivision (1) of this section. (1977, c. 771, s. 4; c. 967; 1979, c. 783; 1983, c. 710; 1985, c. 757, s. 162; 1989, c. 727, s. 218(151), c. 751, s. 7(21); 1989 (Reg. Sess., 1990), c. 900, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 42; 1993, c. 522, s. 17; 1997-261, s. 104; 1997-443, ss. 11A.118(a), 11A.119(a); 1999-84, s. 25; 2000-137, s. 4(oo).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(oo), effective July 20, 2000, added subdivision (1)y; in (3), substituted "subdivision (1) of this section" for "(1)"; and made minor stylistic changes.

Part 24. Governor's Management Committee.

§ 143B-426.22. Governor's Management Council.

(a) Creation; Membership. — The Governor's Management Council is created in the Department of Administration. The Council shall contain the following members: The Secretary of Administration, who shall serve as chairman, a senior staff officer responsible for productivity and management programs from the Departments of Commerce, Revenue, Environment and Natural Resources, Transportation, Crime Control and Public Safety, Cultural Resources, Correction, Health and Human Services, Juvenile Justice and Delinquency Prevention, and Administration; and an equivalent officer from the Offices of State Personnel, State Budget and Management, and the Governor's Program for Executive and Organizational Development. The following persons may also serve on the Council if the entity represented chooses to participate: a senior staff officer responsible for productivity and management programs from any State department not previously specified in this section, and a representative from The University of North Carolina.

(b) Powers. — The Council may:

(1) Coordinate efforts to make State government more efficient and productive;

(2) Review plans and policies submitted by participating agencies to improve agency management and productivity;

(3) Recommend to the Governor the issuance of specific Management Directive and Executive Orders that will establish management policies and procedures to be implemented by the agencies to improve agency management and productivity;

(4) Provide a clearinghouse for productivity initiatives and communicate these initiatives to all agencies;
(5) Authorize special projects on specific management and productivity improvement issues;
(6) Review plans and policies of statewide management programs such as the Incentive Pay Program, the North Carolina Employee Suggestion System, the Work Options Program, and similar productivity improvement programs; and
(7) Develop criteria for annual recognition for outstanding Government Executives. (1983, c. 540, s. 1; c. 907, s. 3; 1989, c. 727, s. 218(152); c. 751, s. 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 43; 1997-443, ss. 11A.109, 11A.119(a); 2000-137, s. 4(pp).)

Effect of Amendments. — Session Laws 2000-137, s. 4(pp), effective July 20, 2000, inserted "Juvenile Justice and Delinquency Prevention" in subsection (a).

Part 28. Office of the State Controller.

§ 143B-426.39. Powers and duties of the State Controller.

The State Controller shall:

(1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds.
(2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgment of the State Controller, are necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.
(3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.
(4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget, Planning, and Management, prescribe a form for the periodic reporting of financial accounts, transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.
(4a) Prescribe that, unless exempted by the State Controller, newly created or acquired component units of the State are required to have the same fiscal year as the State.

(5) Prescribe the manner in which disbursements of the State agencies shall be made, in accordance with G.S. 143-3.
(6) Operate a central payroll system, in accordance with G.S. 143-3.2 and 143-34.1.
(7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency, in accordance with G.S. 143-20.
(8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.
(9) Develop, implement, and amend as necessary a uniform statewide cash management plan for all State agencies in accordance with G.S. 147-86.11.
(9a) Implement a statewide accounts receivable program in accordance with Article 6B of Chapter 147 of the General Statutes.
(10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget, Planning, and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.
(11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget, Planning, and Management, at the end of each quarter, a report on the financial condition and results of operations of the State entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.
(12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report in accordance with generally accepted accounting principles of the preceding fiscal year, in accordance with G.S. 143-20.1. The report shall include State agencies and component units of the State, as defined by generally accepted accounting principles.
(13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes.
(14) through (16) Recodified as G.S. 143B-472.42 (1), (2), and (3) by Session Laws 1997-148, s. 3, effective June 4, 1997. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a); 1997-148, s. 3; 2000-67, s. 7(b); 2000-140, s. 93.1(a).)

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Section 143B-472.42, referred to in subdivision (14) of this section, was repealed by Session Laws 2000-174, s. 1, effective September 1, 2000.

Effect of Amendments. — Session Laws 2000-67, s. 7(b), effective July 1, 2000, added subdivision (4a); and in subdivision (12), inserted "in accordance with generally accepted accounting principles" in the first sentence and added the second sentence.

Session Laws 2000-140, s. 93.1(a), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subdivisions (4), (10) and (11).

Article 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-431. Department of Commerce — functions.

Editor's Note. —
Session Laws 2000-67, s. 14.18(a)-(e), renames the State Energy Conservation Plan as the State Energy Efficiency Program. Effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Residential Energy Conservation Assistance Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Health and Human Services. Similarly, effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Energy Policy Council and State Energy Efficiency Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Administration. Effective July 1, 2000, all vacant positions in the Energy Division of the Department of Commerce are abolished.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-431.2. Department of Commerce — limitation on grants and loans.

The Department of Commerce may not make a loan nor award a grant to any individual, organization, or governmental unit if that individual, organization, or governmental unit is currently in default on any loan made by the Department of Commerce. (2000-56, s. 4.)

Editor's Note. — Session Laws 2000-56, s. 10(c), made the amendment effective July 1, 2000 and applicable to funds appropriated, grants awarded, or loans made on or after that date.

§ 143B-433. Department of Commerce — organization.

The Department of Commerce shall be organized to include:

(1) The following agencies:
  - a. The North Carolina Alcoholic Beverage Control Commission.
  - b. The North Carolina Utilities Commission.
  - c. The Employment Security Commission.
  - d. The North Carolina Industrial Commission.
  - e. State Banking Commission.
  - f. Savings and Loan Association Division.
  - g. The State Savings Institutions Commission.
  - h. Credit Union Commission.
  - i. The North Carolina Milk Commission.
  - j. The North Carolina Mutual Burial Association Commission.
  - k. North Carolina Cemetery Commission.
  - *l*. The North Carolina Rural Electrification Authority.
  - m. Repealed by Session Laws 1985, c. 757, s. 179(d).
  - n. North Carolina Science and Technology Research Center.
  - o. The North Carolina State Ports Authority.

p. North Carolina National Park, Parkway and Forests Development Council.
q. Economic Development Board.
r. Labor Force Development Council.
s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective September 30, 2000.
u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
v. Repealed by Session Laws 1993, c. 321, s. 313b.

(2) Those agencies which are transferred to the Department of Commerce including the:
a. Community Assistance Division.
b. Community Development Council.
c. Employment and Training Division.
d. Job Training Coordinating Council.

(3) Such divisions as may be established pursuant to Article 1 of this Chapter. (1977, c. 198, s. 1; 1979, c. 668, s. 2; 1981, c. 412, ss. 4, 5; 1983, c. 899, s. 1; 1985, c. 757, s. 179(d); 1989, c. 76, s. 26; c. 727, s. 8; c. 751, s. 7(28); 1991 (Reg. Sess., 1992), c. 959, s. 52; 1993, c. 321, s. 313(b); 1998-217, s. 19; 2000-140, s. 76(j).)

Effect of Amendments. — Session Laws 2000-140, s. 76(j), effective September 30, 2000, repealed subdivisions (1)s and (1)t, which read "Energy Policy Council" and "Energy Division," respectively.

Part 2. Economic Development.

§ 143B-434.1. The North Carolina Travel and Tourism Board — creation, duties, membership.

(a) There is created within the Department of Commerce the North Carolina Travel and Tourism Board. The Secretary of Commerce and the Director of the Division of Tourism, Film, and Sports Development will work with the Board to fulfill the duties and requirements set forth in this section, and to promote the sound development of the travel and tourism industry in North Carolina.

(b) The function and duties of the Board shall be:

(1) To advise the Secretary of Commerce in the formulation of policy and priorities for the promotion and development of travel and tourism in the State.
(2) To advise the Secretary of Commerce in the development of a budget for the Division of Tourism, Film, and Sports Development.
(3) To recommend programs to the Secretary of Commerce that will promote the State as a travel and tourism destination and that will develop travel and tourism opportunities throughout the State.
(4) To advise the Secretary of Commerce every three months as to the effectiveness of agencies with which the Department has contracted for advertising and regarding the selection of an advertising agency that will assist the Department in the promotion of the State as a travel and tourism destination.
(5) To name a three-member subcommittee, with one member from each of the eastern, central, and western regions of the State, to make recommendations to the Secretary of Commerce regarding any revisions in the matching funds tourism grants program, project applications, and criteria for projects that qualify for participation in the program.

(6) To advise the Secretary of Commerce from time to time as to the effectiveness of the overall operations of the Division of Tourism, Film, and Sports Development.
(7) To promote the exchange of ideas and information on travel and tourism between State and local governmental agencies, and private organizations and individuals.
(8) To advise the Secretary of Commerce upon any matter that the Secretary, Governor, or Director of the Division of Tourism, Film, and Sports Development may refer to it.

(c) The Board shall consist of 27 members as follows:
(1) The Secretary of Commerce, who shall not be a voting member.
(2) The Director of the Division of Tourism, Film, and Sports Development, who shall not be a voting member.
(3) Two members designated by the Board of Directors of the North Carolina Hotel and Motel Association.
(4) Two members designated by the Board of Directors of the North Carolina Restaurant Association.
(5) Three Directors of Convention and Visitor Bureaus designated by the Board of Directors of the North Carolina Association of Convention and Visitor Bureaus.
(6) The Chairperson of the Travel and Tourism Coalition.
(7) The President of the Travel Council of North Carolina.
(8) A member designated by the Board of Directors of the Travel Council of North Carolina.
(9) The President of North Carolina Citizens for Business and Industry.
(10) One member designated by the North Carolina Petroleum Marketers Association.
(11) One person associated with tourism attractions in North Carolina, appointed by the Speaker of the House of Representatives. One person who is not a member of the General Assembly, appointed by the Speaker of the House of Representatives.
(12) One person associated with the tourism-related transportation industry, appointed by the President Pro Tempore of the Senate. One person who is not a member of the General Assembly, appointed by the President Pro Tempore of the Senate.
(13) Four public members each interested in matters relating to travel and tourism, two appointed by the Governor (one from a rural area and one from an urban area), one appointed by the Speaker of the House, and one appointed by the President Pro Tempore of the Senate.
(14) One member associated with the major cultural resources and activities of the State in North Carolina, appointed by the Governor.
(15) Two members of the House of Representatives, appointed by the Speaker of the House of Representatives.
(16) Two members of the Senate, appointed by the President Pro Tempore of the Senate.

(d) The members of the Board shall serve the following terms: the Secretary of Commerce, the Director of the Division of Tourism, Film, and Sports Development, the Chairperson of the Travel and Tourism Coalition, the President of the Travel Council of North Carolina, and the President of North Carolina Citizens for Business and Industry shall serve on the Board while they hold their respective offices. Each member of the Board appointed by the Governor shall serve during his or her term of office. The members of the Board appointed by the General Assembly shall serve two-year terms beginning on January 1 of odd-numbered years and ending on December 31 of the following year. The first such term shall begin on January 1, 1991, or as soon thereafter as the member is appointed to the Board, and end on December 31, 1992. All other members of the Board shall serve a term which consists of the portion of calendar year 1991 that remains following their appointment or designation and, thereafter, two-year terms which shall begin on January 1 of an even-numbered year and end on December 31 of the following year. The first such two-year term shall begin on January 1, 1992, and end on December 31, 1994.

(e) No member of the Board, except a member serving by virtue of his or her office, shall serve during more than five consecutive calendar years, except that a member shall continue to serve until his or her successor is appointed.

(f) Appointments to fill vacancies in the membership of the Board that occur due to resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term and shall be made by the same appointing authority that made the initial appointment.

(g) Board members who are employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. Board members who are legislators shall be reimbursed for travel and subsistence in accordance with G.S. 120-3.1. All other Board members, except those serving pursuant to subdivisions (3) through (10) of subsection (c) of this section, shall receive per diem, subsistence, and travel expenses at the rate set forth in G.S. 138-5. Board members serving pursuant to subdivisions (3) through (10) of subsection (c) of this section shall not receive per diem, subsistence, or travel expenses. The expenses set forth in this section shall be paid by the Division of Tourism, Film, and Sports Development of the Department of Commerce.

(h) At its first meeting in 1991, the Board shall elect one of its voting members to serve as Chairperson during calendar year 1991. At its last regularly scheduled meeting in 1991, and at its last regularly scheduled meeting in each year thereafter, the Board shall elect one of its voting members to serve as Chairperson for the coming calendar year. No person shall serve as Chairperson during more than three consecutive calendar years. The Chairperson shall continue to serve until his or her successor is elected.

(i) A majority of the current voting membership shall constitute a quorum.

(j) The Secretary of Commerce shall provide clerical and other services as required by the Board. (1991, c. 406, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 54; 1997-497 s. 89(a); 2000-140, s. 79(a).)

Effect of Amendments. — Session Laws 2000-140, s. 79(a), effective July 21, 2000, substituted "Division of Tourism, Film, and Sports Development" for "Division of Travel and Tourism" throughout the section.

§ 143B-434.2. Travel and Tourism Policy Act.

(a) This section shall be known as the Travel and Tourism Policy Act.

(b) The General Assembly of North Carolina finds that:

(1) The State of North Carolina is endowed with great scenic beauty, historical sites, and cultural resources, and with a population whose ethnic diversity and traditions are attractive to visitors.

(2) These resources should be preserved and nurtured, not only because they are appreciated by other Americans and by visitors from other lands, but because they are valued by the State's own residents.

(3) Tourism provides economic well-being by contributing to employment and economic development, generating State revenues and receipts for local businesses, and increasing international trade.

(4) Tourism is an educational and informational medium for personal growth which informs residents about their State's geography and history, their political institutions, their cultural resources, and their environment, and about each other.

(5) Tourism instills State pride and a sense of common interest among the people of the State.
(6) Tourism enhances the quality of life and well-being of the State's residents by affording recreation, new experiences, and opportunities for relief from job stress.
(7) Tourism promotes international understanding and goodwill, and contributes to intercultural appreciation.
(8) Tourism engenders appreciation of the State's cultural, architectural, technological, and industrial achievements.
(9) The development and promotion of tourism to and within the State is in the interest of the people of North Carolina.
(10) Tourism should develop in an orderly manner in order to provide the maximum benefit to the State and its residents.
(11) A comprehensive tourism policy is essential if tourism is to grow in an orderly way.

(c) The policy of the State of North Carolina is to:
(1) Encourage the orderly growth and development of travel and tourism to and within the State.
(2) Promote the State's travel and tourism resources to the residents of the State, and to potential visitors from other states and other countries.
(3) Instill a sense of history in the State's young people by encouraging family visits to State historic sites, and by promoting the preservation and restoration of historic sites, trails, buildings, and districts.
(4) Promote the mental, emotional, and physical well-being of the people of North Carolina by encouraging outdoor recreational activities within the State.
(5) Strengthen a sense of common interest among the residents of the State by encouraging them to visit each other's communities and discover each other's traditions and ways of life.
(6) Increase national and international awareness of the State's cultural contributions by encouraging attendance at orchestral, operatic, dramatic, and other productions by artistic groups performing in the State.
(7) Cultivate the State's commercial interests by encouraging local and county fairs so that visitors may learn about local products and crafts.
(8) Encourage the talents and strengthen the economic independence of State residents by encouraging the preservation of traditional craft skills; the production of handicrafts and folk art by private artisans and craftspeople; and the holding of craft demonstrations.
(9) Provide visitors to the State with a hospitable reception.
(10) Develop and maintain a statewide tourism data base.
(11) Encourage the protection of wildlife and natural resources and the preservation of geological, archaeological, and cultural treasures in tourist areas.
(12) Encourage, assist, and coordinate, where possible, the tourism activities of local and area promotional organizations.
(13) Ensure that the tourism interest of the State is fully considered by State agencies and the General Assembly in their deliberations; and coordinate, to the maximum extent possible, all State activities in support of tourism with the needs of the general public, the political subdivisions of the State, and the tourism industry.

(d) The Department of Commerce, and the Division of Tourism, Film, and Sports Development within that Department, shall implement the policies set forth in this section. The Division of Tourism, Film, and Sports Development shall make an annual report to the General Assembly regarding the status of the travel and tourism industry in North Carolina; the report shall be submitted to the General Assembly by January 15 of each year beginning January 15, 1992. The duties and responsibilities of the Department of Commerce through the Division of Tourism, Film, and Sports Development shall be to:

(1) Organize and coordinate programs designed to promote tourism within the State and to the State from other states and foreign countries.
(2) Measure and forecast tourist volume, receipts, and impact, both social and economic.
(3) Develop a comprehensive plan to promote tourism to the State.
(4) Encourage the development of the State's tourism infrastructure, facilities, services, and attractions.
(5) Cooperate with neighboring states and the federal government to promote tourism to the State from other countries.
(6) Develop opportunities for professional education and training in the tourism industry.
(7) Provide advice and technical assistance to local public and private tourism organizations in promoting tourism to the State.
(8) Encourage cooperation between State agencies and private individuals and organizations to advance the State's tourist interests and seek the views of these agencies and the private sector in the development of State tourism programs and policies.
(9) Give leadership to all concerned with tourism in the State.
(10) Perform other functions necessary to the orderly growth and development of tourism.
(11) Develop informational materials for visitors which, among other things, shall:
    a. Describe the State's travel and tourism resources and the State's history, economy, political institutions, cultural resources, outdoor recreational facilities, and principal festivals.
    b. Urge visitors to protect endangered species, natural resources, archaeological artifacts, and cultural treasures.
    c. Instill the ethic of stewardship of the State's natural resources.
(12) Foster an understanding among State residents and civil servants of the economic importance of hospitality and tourism to the State.
(13) Work with local businesses, including banks and hotels, with educational institutions, and with the United States Travel and Tourism Administration, to provide special services for international visitors, such as currency exchange facilities.
(14) Encourage the reduction of architectural and other barriers which impede travel by physically handicapped persons. (1991, c. 144, ss. 1-4; 1991 (Reg. Sess., 1992), c. 959, s. 85; 2000-140, s. 79(b).)

Effect of Amendments. — Session Laws 2000-140, s. 79(b), effective July 21, 2000, substituted "Division of Tourism, Film, and Sports Development" for "Division of Travel and Tourism" three times in subsection (d).

§ 143B-434.3. Film Industry Development Account.

(a) Creation and Purpose of Account. — There is created in the Department of Commerce, Division of Tourism, Film, and Sports Development, the Film Industry Development Account to provide annual grants as incentives to production companies that engage in production activities in this State. The Division of Tourism, Film, and Sports Development shall administer this program in accordance with the following provisions:

(1) To be eligible for a grant, a production company must engage in production activities in this State. A grant may not be used for political or issue advertising.

(2) A grant may not exceed fifteen percent (15%) of the amount the production company spends for goods and services in this State during the calendar year.

(3) A grant may not exceed two hundred thousand dollars ($200,000) per production.

(b) Production Company Defined. — As used in this section, the term "production company" has the meaning provided in G.S. 105-164.3.

(c) Limitation on eligibility. — No production company shall be eligible for a grant under this section if an original motion picture, television, or radio image for theatrical, commercial, advertising, or educational purposes made by that company contains material that is considered obscene, as defined by G.S. 14-190.1(b).

(d) Reports. — The Department of Commerce shall report annually to the General Assembly concerning the applications made to the account, the payments made from the account, and the effect of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the account, including information regarding to whom payments were made and in what amounts. (2000-140, s. 79(c); 2000-153, ss. 1, 6.)

Editor's Note. — At the direction of the Revisor of Statute, Session Laws 2000-153, s. 6, has been codified as subsection (c) and present subsection (d) has been designated as such.

Session Laws 2000-153, s. 7, made this section effective August 2, 2000.

Effect of Amendments. — Session Laws 2000-140, s. 79(c), effective July 21, 2000, substituted "Division of Tourism, Film, and Sports Development" for Division of Travel and Tourism" in subsection (a).

§ 143B-437.01. Industrial Development Fund.

(a) Creation and Purpose of Fund. — There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars ($5,000)

per new job created up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.

(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b).

(a1) Definitions. — The following definitions apply in this section:

(1) Air courier services. — A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages, except by the United States Postal Service.

(2) Central administrative office. — Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(3) Data processing. — Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(4) Economically distressed county. — A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(5) Eligible industry. — A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(6) Reserved.

(7) Major economic dislocation. — The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. — Defined in the North American Industry Classification System adopted by the United States Office of Budget and Management.

(9) Reserved.

(10) Warehousing and wholesale trade. — Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. — There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. — The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5. (1989, c. 751, s. 9(c); c. 754, s. 54; 1991 (Reg. Sess., 1992), c. 959, s. 60; 1993, c. 444, s. 1; 1996, 2nd Ex. Sess., c. 13, s. 3.5; 1997-456, s. 27; 1998-55, s. 6; 1999-360, s. 17; 2000-56, s. 3(b).)

Effect of Amendments. — Session Laws 2000-56, s. 3(b), effective July 1, 2000, and applicable to funds appropriated, grants awarded, or loans made on or after that date, added subdivision (a)(6).

Part 2B. Reserved.

§§ 143B-437.4 through 143B-437.11: Reserved for future codification purposes.

Part 2C. Reserved.

§§ 143B-437.12 through 143B-437.19: Reserved for future codification purposes.

Part 2D. North Carolina Rural Redevelopment Authority.

§ 143B-437.20. Short title and intent.

This Part is the "North Carolina Rural Redevelopment Authority Act". The purpose of the North Carolina Redevelopment Authority is to finance rural economic development projects and invest in rural business development. (2000-148, s. 1.)

Editor's Note. — Session Laws 2000-148, s. 7, made this Part effective July 1, 2000.

§ 143B-437.21. Definitions.

The following definitions apply in this Part:

(1) Authority. — The North Carolina Rural Redevelopment Authority.

(2) Board. — The Board of Directors of the Authority.

(3) Development project. — Any investment that enables or makes more likely the location or expansion of industrial and commercial businesses in rural counties, which may include sites and industrial parks or centers, together with improvements, such as shell buildings and internal infrastructure.

(4) Financial institution. — A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841, et seq., or its wholly owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a, et seq., or its wholly owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1, et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company. The term does not include, however, a business that does not generally market its services to the public and is controlled by a business that is not a financial institution.

(5) Intermediate-term loan. — A loan whose term does not exceed three years.

(6) Regional partnership. — Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The Northeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The Global TransPark Development Commission created in G.S. 158-33.

e. The Carolinas Partnership, Inc.

f. The Research Triangle Regional Partnership.

g. The Piedmont Triad Partnership.

(7) Revenues. — The receipts of the Authority during an accounting period, including interest and dividends on investments, realized capital gains, income from lending and consulting activities, rent or lease income, appropriations from the General Assembly, grants from the Golden L.E.A.F. (Long-term Economic Advancement Foundation), Inc., and grants and gifts from public and private entities to further the purposes of the Authority.

(8) Rural county. — A county in North Carolina with a density of fewer than 200 people per square mile based on the most recent United States decennial census.

(9) Small business investment company. — A small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq. (2000-148, s. 1.)

Editor's Note. — Session Laws 2000-149, s. 3, directs each regional partnership, as defined in G.S. 143B-437.21, with the assistance of the North Carolina Rural Economic Development Center, to study the information technology infrastructure and information technology needs of each county within its particular region. Each study is to include an inventory of existing information technology infrastructure, an inventory of information technology needs, an analysis of how the information technology needs affect industrial and business recruitment, and recommendations that address the information technology needs of each region. In conducting the studies required by this section, the regional partnerships are to consider the findings of the Connect NC study. The regional partnerships may contract with the North Carolina Rural Economic Development Center as needed to undertake these studies. No later than November 1, 2001, each regional partnership is to report the results of its study, including any legislative proposals, to the Joint Select Committee on Information Technology.

§ 143B-437.22. Creation of Authority and Board.

(a) Creation. — The North Carolina Rural Redevelopment Authority is created as a body corporate and politic with the powers and jurisdiction as provided under this Part or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority is located within the Department of Commerce, but exercises all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Commerce and, notwithstanding any other provision of law, is subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordinating and reporting.

(b) Board of Directors. — The Authority is governed by a Board of Directors, which consists of the following 11 members:

(1) Three members appointed by the Governor, two of whom must be representatives of financial institutions and one of whom must be an elected official representing a local government of or in a rural county.

(2) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom must be a representative of a regional partnership with a predominantly rural constituency and one of whom must be a representative of a financial institution.

(3) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, two of whom must be representatives of financial institutions.

(4) The Secretary of Commerce, who shall serve ex officio.

(5) The chief executive officer of the Authority.

(c) Oath. — As the holder of an office, each member of the Board must take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Board member.

(d) Selection Criteria. — In making appointments to the Board, the Governor and the General Assembly shall give consideration to the geographical representation of the State. In addition, members appointed representing financial institutions ideally would be experienced in areas such as commercial lending and commercial real estate lending, public finance, and economic development; work assignments or experiences in rural counties also would be desirable.

(e) Terms. — The term of office of a member of the Board is three years, except that the Governor shall designate two of the initial members appointed under subdivision (b)(1) of this section to serve a term of one year, and the General Assembly shall designate one of the initial members appointed under subdivision (b)(2) of this section and one of the initial members appointed under subdivision (b)(3) of this section to serve a term of two years. The term of office for the chief executive officer of the Authority shall coincide with the officer's employment by the Board.

(f) Chair and Vice-Chair of the Board. — The Governor shall designate one of the members appointed by the Governor as the Chair of the Board. The Governor shall convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a Vice-Chair of the Board.

(g) Vacancies. — All members of the Board shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(h) Removal of Board Members. — The Governor may remove any member of the Board for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Governor or the person who appointed a member of the Board may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(i) Organization of the Board. — The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum shall consist of a majority of the members of the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board and the Authority.

(j) Compensation of the Board. — No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board other than the chief executive officer shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

(k) Treasurer. — The Board shall select the Authority's treasurer. The Board shall require a surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid by the Authority as a necessary expense of the Authority.

(*l*) Chief Executive Officer and Other Employees. — The Board shall appoint a full-time professional chief executive officer, whose salary shall be fixed by the Board, to serve at its pleasure. The chief executive officer or a person designated by the chief executive officer shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary.

(m) Office. — The Board shall establish an office for the transaction of the Authority's business at the place the Board finds advisable or necessary to implement the provisions of this Part. (2000-148, s. 1.)

§ 143B-437.23. Powers of the Authority.

(a) The Authority has all of the powers necessary to execute the provisions of this Part, including at least the following powers:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To finance the purchase of real or personal property.

(3) To contract and enter into agreements with the State, local governments, other authorities of North Carolina, and other states for the interchange of business.

(4) To create and operate agencies and departments needed to implement this Part.

(5) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(6) To apply for, accept, and administer grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, and to expend the money in accordance with the requirements imposed by the donor.
(7) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Part.
(8) To execute financing agreements, security documents, and other instruments necessary in exercising its power under this Part.
(9) To fix, charge, collect, pledge, or assign revenues of the Authority.
(10) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Board and to fix and pay their compensation from funds available to the Authority.
(11) To provide consulting and advisory services to government entities and to private, nonprofit entities.
(12) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.
(13) To exercise the powers granted counties and cities under G.S. 158-7.1(a).
(14) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for the purposes and upon the terms as may be mutually agreeable.
(15) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.
(16) To create and administer the Rural Investment Fund and the Long-Term Rural Development Fund, as provided in this Part.
(17) To invest in securities of a small business investment company or in a limited partnership interest in a partnership that invests principally in companies in rural counties.
(18) To act as a regranting agency for government grants specifically designated for that purpose.

(b) To execute the powers provided in subsection (a) of this section, the Board shall determine the policies of the Authority by majority vote of the members of the Board present and voting, a quorum having been established. Once a policy is determined, the Board shall communicate it to the chief executive officer, who has the exclusive authority to execute the policy of the Authority. No member of the Board is authorized to give operational directives to any employee of the Authority other than the chief executive officer.

(c) The Authority does not have the power of eminent domain or the power to levy any tax. (2000-148, s. 1.)

§§ 143B-437.24, 143B-437.25: Reserved for future codification purposes.

§ 143B-437.26. Authority funds.

Funds of the Authority may be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the Chair, the acting Chair, or the chief executive officer. No warrants may be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Part and unless the account or expenditure has been audited and approved by the Authority or its chief executive officer. (2000-148, s. 1.)

§ 143B-437.27. Rural Investment Fund.

The Authority may create a revolving loan fund to be called the Rural Investment Fund. The Authority shall use monies in the Investment Fund only to make intermediate-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties. The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Investment Fund. The Authority shall give priority to applications from regional partnerships. (2000-148, s. 1.)

§ 143B-437.28. Long-Term Rural Development Fund.

(a) The Authority may create a fund to be known as the Long-Term Rural Development Fund. The Authority may invest and reinvest the assets of the Development Fund.

(b) The income derived from the investment or deposit of the Development Fund shall be used for the following purposes:

(1) To pay the administrative expenses of the Authority.

(2) To make intermediate-term loans and longer-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties.

(3) To provide for the development of property for industrial sites and industrial parks in rural counties, including any of the following:

a. Providing water, sewer, gas, or electrical distribution lines or equipment for an industrial site or industrial park.

b. Providing road or railroad improvements for an industrial site or industrial park.

c. Providing fiber optic or coaxial cable, towers, and other infrastructure items to accommodate high-speed Internet access.

d. Providing air or water pollution control facilities.

(c) The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Development Fund. The Authority shall give priority to applications from regional partnerships. (2000-148, s. 1.)

§ 143B-437.29. Contracting with minority businesses.

The Authority must comply with the policies regarding contracting with minority businesses as set out in G.S. 143-48, 143-128(f), and 143-135.5 and with any other applicable laws. The Authority is subject to Executive Order Number 150, issued April 20, 1999, regarding contracting with historically underutilized businesses. (2000-148, s. 1.)

§ 143B-437.30. Conflicts of interest.

If any member, officer, or employee of the Authority is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Authority, the member, officer, or employee must disclose the interest to the Board, which must set forth the disclosure in the minutes of the Board. The member, officer, or employee having an interest may not participate on behalf of the Authority in the authorization of any contract. (2000-148, s. 1.)

§ 143B-437.31. Cooperation by other State agencies.

All State officers and agencies shall cooperate and may render services where appropriate to the Authority within their respective functions as may be requested by the Authority. (2000-148, s. 1.)

§ 143B-437.32. Annual and quarterly reports.

The Authority must, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each report must be accompanied by an audit of its books and accounts. The audit must be conducted by the State Auditor. The costs of all audits shall be paid from funds of the Authority.

Each annual report must be accompanied by data indicating the geographical distribution of development projects funded directly or indirectly by the Authority. Every three years, the Authority shall provide to the Governor and to the General Assembly an analysis of the data for the previous three-year period showing the extent to which the funding of development projects has been distributed among the rural counties of every geographical region in an equitable manner.

The Authority must submit quarterly reports to the Joint Legislative Commission on Governmental Operations. The reports must summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Commission. (2000-148, s. 1.)

§ 143B-437.33. Dissolution.

Whenever the Board by resolution determines that the purposes for which the Authority was formed have been substantially fulfilled and that all obligations incurred by the Authority have been fully paid or satisfied, the Board may declare the Authority dissolved. On the effective date of the resolution, the title to all funds and other property owned by the Authority at the time of the dissolution vests in the State and possession of the funds and other property must be delivered to the State. (2000-148, s. 1.)

§§ 143B-437.34 through 143B-347.39: Reserved for future codification purposes.

Part 2E. North Carolina Rural Internet Access Authority (Repealed effective December 1, 2003).

§ 143B-437.40. (Repealed effective December 1, 2003) Short title and intent.

This Part is the "North Carolina Rural Internet Access Authority Act." The General Assembly finds as follows:

(1) Access to computers and the Internet, along with the ability to effectively use these technologies, are becoming increasingly important for full participation in America's economic, political, and social life.

Part 2E has a postponed repeal date. See notes.

(2) Affordable, high-speed Internet access is a key competitive factor for economic development and quality of life in the New Economy of the global marketplace.
(3) In the digital age, universal connectivity at affordable prices is a necessity for business transactions, education and training, health care, government services, and the democratic process.
(4) Unequal access to computer technology and Internet connectivity by income, educational level and/or geography could deepen and reinforce the divisions that exist in our society.
(5) The intent of the Rural Internet Access Authority is to close this digital divide for the citizens of North Carolina. (2000-149, s. 1.)

Editor's Note. — Session Laws 2000-149, s. 3, directs each regional partnership, as defined in G.S. 143B-437.21, with the assistance of the North Carolina Rural Economic Development Center, to study the information technology infrastructure and information technology needs of each county within its particular region. Each study is to include an inventory of existing information technology infrastructure, an inventory of information technology needs, an analysis of how the information technology needs affect industrial and business recruitment, and recommendations that address the information technology needs of each region. In conducting the studies required by this section, the regional partnerships are to consider the findings of the Connect NC study. The regional partnerships may contract with the North Carolina Rural Economic Development Center as needed to undertake these studies. No later than November 1, 2001, each regional partnership is to report the results of its study, including any legislative proposals, to the Joint Select Committee on Information Technology.

Session Laws 2000-149, s. 4, provides that the act does not obligate the General Assembly to appropriate funds.

Session Laws 2000-149, s. 5, makes Part 2E effective August 2, 2000. The North Carolina Rural Internet Access Authority created in the act is dissolved effective December 31, 2003. The act is repealed effective December 31, 2003. Part 2E of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(73), as enacted by the act, are repealed effective December 1, 2003.

§ 143B-437.41. (Repealed effective December 1, 2003) Definitions.

The following definitions apply in this Part:
(1) Authority. — The North Carolina Rural Internet Access Authority.
(2) Commission. — The governing body of the Authority.
(3) High-speed broadband Internet access. — Internet access with transmission speeds of at least 128 kilobits per second for residential customers and at least 256 kilobits per second for business customers.
(4) Regional partnership. — Defined in G.S. 143B-437.21.
(5) Rural county. — A county with a density of fewer than 200 people per square mile based on the 1990 United States decennial census. (2000-149, s. 1.)

Editor's Note. — For repeal of Part 2E, and dissolution of the North Carolina Rural Internet Access Authority, see the editor's note under § 143B-437.40.

§ 143B-437.42. (Repealed effective December 1, 2003) Creation of Authority and Commission.

(a) Creation. — The North Carolina Rural Internet Access Authority is created within the Department of Commerce and, notwithstanding any other provision of law, is subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordinating and

Part 2E has a postponed repeal date. See notes.

reporting. These functions of the Secretary of Commerce are ministerial and shall be performed only pursuant to the direction and policy of the Commission.

The purpose of the Authority is to manage, oversee, and monitor efforts to provide rural counties with high-speed broadband Internet access. The Authority shall also serve as the central rural Internet access policy planning body of the State and shall communicate and coordinate with State, regional, and local agencies and private entities in order to implement a coordinated rural Internet access policy.

(b) Commission. — The Authority is governed by a Commission that consists of 21 members, six members appointed by the Governor, six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and the following three ex officio, voting members: the State's Chief Information Officer, the chair of the North Carolina Rural Economic Development Center, and the Secretary of Commerce.

It is the intent of the General Assembly that the appointing authorities, in making appointments, shall appoint members who represent the geographic, gender, and racial diversity of the State, members who represent rural counties, members who represent regional partnerships, and members who represent the communications industry, which may include local telephone exchange companies, rural telephone cooperatives, Internet service providers, commercial wireless communications carriers, and other communications businesses.

(c) Oath. — As the holder of an office, each member of the Commission must take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Commission member.

(d) Terms; Commencement; Staggering. — Except as provided in subsection (f) of this section, all terms of office shall commence on August 1 of the year the appointment is made. The appointing officers shall designate one-half of their appointees to serve one-year terms; members may serve up to four consecutive one-year terms. The appointing officers shall designate their remaining appointees to serve three-year terms; members may serve up to two consecutive three-year terms.

(e) Chair. — The Governor shall designate one of the members appointed by the Governor as the Chair of the Commission. The Governor shall convene the first meeting of the Commission.

(f) Vacancies. — All members of the Commission shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(g) Removal of Commission Members. — The Governor may remove any member of the Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Governor or the person who appointed a member may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(h) Compensation of the Commission. — No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Commission or officers or other private persons. The members of the Commission shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

Part 2E has a postponed repeal date. See notes.

(i) Staff. — The North Carolina Rural Economic Development Center, Inc., shall provide administrative and professional staff support for the Authority under contract.

(j) Conflicts of Interest. — Members of the Authority shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest. In addition, if any member, officer, or employee of the Authority is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Authority, the member, officer, or employee must disclose the interest to the Commission, which must set forth the disclosure in the minutes of the Commission. The member, officer, or employee having an interest may not participate on behalf of the Authority in the authorization of any contract. (2000-149, s. 1.)

Editor's Note. — For repeal of Part 2E, and dissolution of the North Carolina Rural Internet Access Authority, see the editor's note under § 143B-437.40.

§ 143B-437.43. (Repealed effective December 1, 2003) Powers, duties, and goals of the Authority.

(a) Powers. — The Authority shall have the following powers:
(1) To employ, contract with, direct, and supervise all personnel and consultants.
(2) To apply for, accept, and utilize grants, contributions, and appropriations in order to carry out its duties and goals as defined in this Part.
(3) To enter into contracts and to provide support and assistance to local governments, nonprofit entities, and regional partnerships, in carrying out its duties and goals under this Part.
(4) To review and recommend changes in all laws, rules, programs, and policies of this State or any agency or subdivision thereof to further the goals of rural Internet access.

(b) Duties. — The Authority shall have the following duties:
(1) To develop and recommend to the Governor, the General Assembly, and the North Carolina Rural Redevelopment Authority a plan to provide rural counties with high-speed broadband Internet access.
(2) To propose funding that may be needed from the North Carolina Rural Redevelopment Authority established in Part 2D of this Article and from other appropriate sources for incentives for the private sector to make necessary investments to achieve the Authority's goals and objectives.
(3) To set specific targets and milestones to achieve the goals and objectives set out in subsection (c) of this section.

(c) Goals. — The goals and objectives of the Authority are:
(1) Local dial-up Internet access provided from every telephone exchange within one year.
(2) High-speed Internet access available to every citizen of North Carolina within three years, at prices in rural counties that are comparable to prices in urban North Carolina.
(3) Two model Telework Centers in either enterprise tier one or enterprise tier two area established by January 1, 2002. To the extent practicable, the Centers should be established in existing facilities.
(4) Significant increases in ownership of computers, related web devices, and Internet subscriptions promoted throughout North Carolina.
(5) Accurate, current, and complete information provided through the Internet to citizens about the availability of present telecommunica-

Part 2E has a postponed repeal date. See notes.

tions and Internet services with periodic updates on the future deployment of new telecommunications and Internet services.

(6) Development of government Internet applications promoted to make citizen interactions with government agencies and services easier and more convenient and to facilitate the delivery of more comprehensive programs, including training, education, and health care.

(7) Open technology approaches employed to encourage all potential providers to participate in the implementation of high-speed Internet access with no technology bias.

(8) To coordinate activities, conduct and sponsor research, and recommend and advocate actions, including regulatory and legislative actions to achieve its goals and objectives.

(d) Limitations. — The Authority does not have the power of eminent domain or the power to levy any tax.

(e) Reports. — The Authority must submit quarterly reports to the Governor, the Joint Select Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations. The reports must summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Governor, the Committee, or the Commission. (2000-149, s. 1.)

Editor's Note. — For repeal of Part 2E, and dissolution of the North Carolina Rural Internet Access Authority, see the editor's note under § 143B-437.40.

Part 8. Energy Division.

§§ 143B-448 through 143B-450.1: Repealed by Session Laws 2000-140, s. 76, effective September 30, 2000.

Cross References. — As to reporting and data collection regarding stocks of coal and petroleum fuels, see § 143-345.13 et seq.

Part 10. North Carolina State Ports Authority.

§ 143B-456.1. Bonds and notes for special user projects.

(a) The Authority is also hereby authorized, subject to the provisions of this section, to issue, at one time or from time to time, bonds and notes to finance special user projects. The term "special user project" shall mean any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with any commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine or environmental facility or improvement primarily for the use of one or more private parties. Any such special user project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, restaurant and lodging facilities, warehouses, distribution centers, pollution control facilities, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, waterways, docks, wharves and other improvements necessary or convenient for ships, tugboats, barges or other vessels or for the construction, maintenance and operation of any building or structure, or addition thereto.

(b) Bonds and notes may be sold to finance special user projects irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions.

(c) The bonds or notes of each issue of the Authority under this section shall be special, limited obligations of the Authority payable solely from such other revenues, income or assets of the Authority as the Authority shall specifically assign or pledge and such funds, collateral and undertakings as any private parties may assign or pledge therefor.

The financing agreement may provide the Authority with rights and remedies in the event of a default by the obligor thereunder including, without limitation, reentry and repossession or leasing or sale or foreclosure of the special user project to others.

The Authority's interest in a special user project may be that of owner, lessor, operator, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the Authority need not have any ownership or possessory interest in the project, and if that of lessor, the lessee may have an option or an obligation to purchase the special user project upon the expiration or termination of the lease.

(d) Bonds and notes issued under the provisions of this section may be secured by one or more agreements, including forecloseable deeds of trust and other trust instruments, which may pledge and assign to the trustee or the holders of its obligations the assets, revenues, and income provided for the security of the bonds or notes, including proceeds from the sale of any special user project, or part thereof, insurance proceeds and condemnation awards, and third-party agreements, and may convey or mortgage the project and other property and collateral to secure a bond issue.

The Authority may subordinate the bonds or notes or its rights, assets, revenues and income derived from any special user project to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest.

(e) Notwithstanding any other provision of law, the Authority may agree that all contracts relating to the acquisition, construction, installation and equipping of the special user project shall be solicited, negotiated, awarded and executed by the private party or parties for which the Authority is financing the special user project or their agents subject only to such approvals by the Authority as the Authority may require. The Authority may, out of the proceeds of bonds or notes, make advances to or reimburse such private parties or such agents for all or a portion of the costs incurred in connection with such contracts. The provisions of Section 143B-463 of this Part shall have no application to funds and moneys derived pursuant to this section.

(f) **(Effective until July 1, 2001)** The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, being G.S. 25-9-101 to G.S. 25-9-607, inclusive, shall apply to transactions under this section to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(e) and G.S. 25-9-302(6) hereby repealed.

(f) **(Effective July 1, 2001)** Article 9 of Chapter 25 of the General Statutes applies to transactions under this section. (1981, c. 856, s. 2; 2000-169, s. 41.)

Subsection (f) Set Out Twice. — The first version of subsection (f) set out above is effective until July 1, 2001. The second version of subsection (f) set out above is effective July 1, 2001.

Effect of Amendments. — Session Laws 2000-169, s. 41, effective July 1, 2001, rewrote subsection (f).

Part 14. Business Energy Improvement Program.

§§ 143B-472.30 through 143B-472.34: Repealed by Session Laws 2000-140, s. 76, effective September 30, 2000.

Cross References. — As to the Business Energy Improvement Program, see now § 143-345.16 et seq.

Editor's Note. — Sections 143B-473.33 and 143B-473.34 were formerly reserved for future codification purposes.

Part 16. Information Technology Related State Government Functions.

§§ 143B-472.40 through 143B-472.67: Repealed by Session Laws 2000-174, s. 1, effective September 1, 2000.

Cross References. — For the Office of Information Technology Services, see now § 147-33.75 et seq.

Editor's Note. — Repealed §§ 143B-472.41, 143B-472.52 and 143B-472.64 were amended effective July 21, 2000, by Session Laws 2000-140, ss. 93.1(a), (c), (h), and (*l*), which updated references therein to refer to the Office of State Budget, Planning and Management.

Repealed § 143B-472.51, 143B-472.54, 143B-472.58, and 143B-472.63 were amended effective July 14, 2000, by Session Laws 2000-130, ss. 1 to 4.

§§ 143B-472.68, 143B-472.69: Reserved for future codification purposes.

Part 17. Electronic Procurement in Government.

§ 143B-472.70: Recodified as § 143-48.3 by Session Laws 2000-140, s. 5.95(a), effective July 1, 2000.

Editor's Note. — Session Laws 2000-67, s. 7.8, effective July 1, 2001, added new Part 17, with new § 143B-472.70, relating to electronic procurement. Subsequently, § 143B-472.70 was recodified as § 143-48.3, by Session Laws 2000-140, s. 95(a), effective July 21, 2000. Session Laws 2000-140, s. 95(b), effective July 21, 2000, repealed Part 17.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as the 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ 143B-473. Department of Crime Control and Public Safety — creation.

Editor's Note. —

Session Laws 2000-67, s. 19.7, transfers the Guard Response Alternative Sentencing Program and all its functions, powers, duties, and obligations from the Department of Crime Control and Public Safety for the Guard Response

Alternative Sentencing Program to the Office of Juvenile Justice (now the Department of Juvenile Justice and Delinquency Prevention). The Program is to continue to function as an additional probation option for certain first-time juveniles who have been adjudicated delinquent and who are subject to Level 2 disposition.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Part 3. Governor's Crime Commission.

§ 143B-478. Governor's Crime Commission — creation; composition; terms; meetings, etc.

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 36 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a "high crime area'), three police executives (one of whom shall be from a "high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a "private juvenile delinquency program," and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Assistant Director of the Intervention/Prevention Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention Division of the Department of Juvenile Justice and Delinquency Prevention, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State

Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Parole, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Intervention/Prevention Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention Division of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed under subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business. (1965, c. 663; 1977, c. 11, s. 1; 1981, c. 467, ss. 1-5; 1981 (Reg. Sess., 1982), c. 1189, s. 4; 1991, c. 739, s. 32; 1997-443, s. 11A.118(a); 1998-170, s. 3; 1998-202, s. 4(aa); 1999-423, s. 11; 2000-137, s. 4(ee).)

Effect of Amendments. — Session Laws 2000-137, s. 4(ee), effective July 20, 2000, substituted "Secretary of the Department of Juvenile Justice and Delinquency Prevention" for "Director of the Office of Juvenile Justice" in subdivisions (a)(1)a. and (b)(1); substituted "Division of the Department of Juvenile Justice and Delinquency Prevention" for "Bureau of the Office of Juvenile Justice" twice each in subdivisions (a)(2) and (b)(1); and deleted "the representative of the Office of Juvenile Justice" following "by the Governor" in subdivision (b)(2).

Part 6. Community Penalties Program.

§§ 143B-508 through 143B-510: Reserved for future codification purposes.

ARTICLE 12.

Department of Juvenile Justice and Delinquency Prevention.

Part 1. Creation of Department.

§ 143B-511. Creation of the Department of Juvenile Justice and Delinquency Prevention.

There is hereby created and constituted a department to be known as the "Department of Juvenile Justice and Delinquency Prevention", with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article. (1998-202, s. 1(b); 2000-137, s. 1(b).)

Cross References. — As to the Child Residential Treatment Services Program, see editor's note at § 143B-137.1. As to services to children at risk for institutionalization or other out-of-home placement, see editor's note at § 143B-137.1.

Editor's Note. — Session Laws 2000-137, s. 1(a) repealed former Article 3C of Chapter 147. Session Laws 2000-137, s. 1(b) enacted a new Article 12 of Chapter 143B. Historical citations to the sections in former Article 3C of Chapter 147 have been added to the corresponding sections in new Article 12 of Chapter 143B as recodified.

The sections in Article 12 have been numbered at the direction of the Revisor of Statutes, the section numbers in Session Laws 2000-137, s. 1(b) having been §§ 143B-511 to 143B-537.

Session Laws 2000-137, s. 5, made this Article effective July 20, 2000.

Session Laws 2000-67, s. 19, transfers the Center for Prevention of School Violence and all functions, powers, duties, and obligations from the University of North Carolina to the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention). The Center is to continue to consult with the University and the Department of Public Instruction to enhance research opportunities and specialized study areas such as teacher preparation, school resource officer development, suicide prevention, and best practices.

Session Laws 2000-67, s. 19.7, transfers the Guard Response Alternative Sentencing Program and all functions, powers, duties, and obligations vested in the Department of Crime Control and Public Safety for the Guard Response Alternative Sentencing Program to the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention). The Program is to continue to function as an additional probation option for certain first-time juveniles who have been adjudicated delinquent and who are subject to Level 2 disposition.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-512. Transfer of Office of Juvenile Justice authority to the Department of Juvenile Justice and Delinquency Prevention.

(a) All (i) statutory authority, powers, duties, and functions, including directives of S.L. 1998-202, rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Office of Juvenile Justice under the Office of the Governor are transferred to and vested in the Department of Juvenile Justice and Delinquency Prevention. This transfer has all of the elements of a Type I transfer as defined in G.S. 143A-6.

(b) The Department shall be considered a continuation of the Office of Juvenile Justice for the purpose of succession to all rights, powers, duties, and obligations of the Office and of those rights, powers, duties, and obligations exercised by the Office of the Governor on behalf of the Office of Juvenile Justice. Where the Office of Juvenile Justice is referred to by law, contract, or other document, that reference shall apply to the Department. Where the Office of the Governor is referred to by contract or other document, where the Office of the Governor is acting on behalf of the Office of Juvenile Justice, that reference shall apply to the Department.

(c) All institutions previously operated by the Office of Juvenile Justice and the present central office of the Office of Juvenile Justice, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Office or by the Office of the Governor for the Office of Juvenile Justice, shall be administered by the Department of Juvenile Justice and Delinquency Prevention. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§§ 143B-513, 143B-514: Reserved for future codification purposes.

Part 2. General Provisions.

§ 143B-515. Definitions.

In this Article, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. — The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.

(2) Community-based program. — A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(3) County Councils. — Juvenile Crime Prevention Councils created under G.S. 143B-544.

(4) Court. — The district court division of the General Court of Justice.
(5) Court counselor. — A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.
(6) Custodian. — The person or agency that has been awarded legal custody of a juvenile by a court.
(7) Delinquent juvenile. — Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.
(8) Department. — The Department of Juvenile Justice and Delinquency Prevention.
(9) Detention. — The secure confinement of a juvenile under a court order.
(10) Detention facility. — A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.
(11) District. — Any district court district as established by G.S. 7A-133.
(12) Judge. — Any district court judge.
(13) Judicial district. — Any district court district as established by G.S. 7A-133.
(14) Juvenile. — Except as provided in subdivisions (7) and (22) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.
(15) Juvenile court. — Any district court exercising jurisdiction under this Chapter.
(16) Post-release supervision. — The supervision of a juvenile who has been returned to the community after having been committed to the Department for placement in a training school.
(17) Probation. — The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.
(18) Protective supervision. — The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.
(19) Secretary. — The Secretary of Juvenile Justice and Delinquency Prevention.
(20) State Council. — The State Advisory Council on Juvenile Justice and Delinquency Prevention established under G.S. 143B-556.
(21) Training school. — A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department.
(22) Undisciplined juvenile. —
a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or
b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from

home for a period of more than 24 hours. (1998-202, ss. 1(b), 2(a); 2000-137, s. 1(b).)

§ 143B-516. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.

(a) The head of the Department is the Secretary. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that training schools be phased out as populations diminish.

(2) Close a State training school when its operation is no longer justified and transfer State funds appropriated for the operation of that training school to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing training schools, provided the Advisory Budget Commission reviews this action.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding, on a matching basis, juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Assist the Criminal Justice Information Network Governing Board with administering a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles. The plan shall include attendance at appropriate professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the Secretary shall prescribe the functions, powers, duties, and obligations of every agency or division in the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations. The Department may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. In developing the model, the Department shall consider the recommendations of the State Advisory Council on Juvenile Justice and Delinquency Prevention. (1998-202, ss. 1(b), 2(b), 2(f); 1998-217, ss. 57(2), 57(3); 2000-137, s. 1(b).)

Editor's Note. — Session Laws 1999-237, s. 21.13(a) through (k), as amended by Session Laws 2000-67, ss. 19.5(a) and (b), provides for the establishment in Eastern North Carolina of a pilot program for a multifunctional juvenile facility to provide juveniles involved in the juvenile justice system with custodial, rehabilitation, treatment, and program services, including substance abuse and sex offender services. In establishing the pilot, the Office of Juvenile Justice (now the Department of Juvenile Justice and Delinquency Prevention) shall contract with a private for-profit or nonprofit firm for the construction and operation of such a multifunctional facility totaling up to 100 beds. Any contract entered under the authority of this section shall be for a period not to exceed 10 years. The Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention) is to house only juveniles who are in the North Carolina juvenile justice system in the facility. Juvenile offenders housed in private facilities shall be governed by the State laws applicable to juvenile offenders housed in State facilities. The Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention) shall make a written report no later than March 1, 2001, on the status of the pilot program and shall evaluate the program annually and report on the findings of the evaluations by May 1, 2001, and May 1, 2003.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-517. Authority to contract with other entities.

(a) The Department may contract with any governmental agency, person, or association for the accomplishment of its duties and responsibilities. The expenditure of funds under these contracts shall be for the purposes for which the funds were appropriated and not otherwise prohibited by law.

(b) The Department may enter into contracts with, and act as intermediary between, any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program. As a condition of assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees.

(c) The Department and any other appropriate State or local agency may purchase services from public or private agencies providing delinquency prevention programs or juvenile court services, including parenting responsibility classes. The programs shall meet State standards. As institutional populations are reduced, the Department may divert State funds appropriated for institutional programs to purchase the services under the Executive Budget Act.

(d) Each programmatic, residential, and service contract or agreement entered into by the Department shall include a cooperation clause to ensure compliance with the Department's quality assurance requirements and cost-accounting requirements. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-518. Authority to assist private nonprofit foundations.

The Department may provide appropriate services or allow employees of the Department to assist any private nonprofit foundation that works directly with the Department's services or programs and whose sole purpose is to support these services and programs. A Department employee shall be allowed to work with a foundation no more than 20 hours in any one month. These services are not subject to Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the Department of State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall transmit to the Department a copy of the annual financial audit report of the private nonprofit foundation. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-519. Annual report.

On or before April 1 each year, beginning with the year 2001, the Department shall report to the General Assembly on the effectiveness and cost benefit of every program operated and contracted by the Department and a summary of the local programs that receive State funding. The report shall include the most current institutional populations of juveniles being served by the Department, a comparison of the costs of the services, and a ranking of all programs that provide services to juveniles. The Department shall submit the report to the various State agencies providing services to juveniles. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§§ 143B-520 through 143B-524: Reserved for future codification purposes.

Part 3. Juvenile Facilities.

§ 143B-525. Juvenile facilities.

In order to provide any juvenile in a juvenile facility with appropriate treatment according to that juvenile's need, the Department shall be responsible for the administration of statewide educational, clinical, psychological, psychiatric, social, medical, vocational, and recreational services or programs. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-526. Authority to provide necessary medical or surgical care.

The Department may provide any medical and surgical treatment necessary to preserve the life and health of juveniles committed to the custody of the Department; however, no surgical operation may be performed except as authorized in G.S. 148-22.2. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-527. Compensation to juveniles in care.

A juvenile who has been committed to the Department may be compensated for work or participation in training programs at rates approved by the Secretary within available funds. The Secretary may provide for a reasonable allowance to the juvenile for incidental personal expenses, and any balance of the juvenile's earnings remaining at the time the juvenile is released shall be paid to the juvenile or the juvenile's parent or guardian. The Department may accept grants or funds from any source to compensate juveniles under this section. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-528. Visits and community activities.

(a) The Department shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Department.

(b) The Department shall develop a program of home visits for juveniles in the custody of the Department. The visits shall begin after the juvenile has been in the custody of the Department for a period of at least six months. In developing the program, the Department shall adopt criteria that promote the protection of the public and the best interests of the juvenile. (1998-202, ss. 1(b), (2)c; 2000-137, s. 1(b).)

§ 143B-529. Regional detention services.

The Department is responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services that offer juvenile detention care of sufficient quality to meet State standards to any juvenile requiring juvenile detention care within the State in a detention facility as follows:

(1) The Department shall plan with the counties operating a county detention facility to provide regional juvenile detention services to surrounding counties. The Department has discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate factors.

(2) The Department may plan with any county that has space within its county jail system to use the existing space for a county detention facility when needed, if the space meets the State standards for a detention facility and meets all of the requirements of G.S. 153A-221. The use of space within the county jail system shall be constructed to ensure that juveniles are not able to converse with, see, or be seen by the adult population, and juveniles housed in a space within a county jail shall be supervised closely.

(3) The Department shall plan for and administer regional detention facilities. The Department shall carefully plan the location, architectural design, construction, and administration of a program to meet the needs of juveniles in juvenile detention care. The physical facility of a regional detention facility shall comply with all applicable State and federal standards. The programs of a regional detention facility shall comply with the standards established by the Department. (1998-202, ss. 1(b), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b).)

§ 143B-530. State subsidy to county detention facilities.

The Department shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention facility in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Department. The Department may vary the exact funding formulas to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care. (1998-202, ss. 1(b), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b).)

§ 143B-531. Authority for implementation.

In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department may:

(1) Release or transfer a juvenile from one detention facility to another when necessary to administer the juvenile's detention appropriately.

(2) Plan with counties that operate county detention facilities to provide regional services and to upgrade physical facilities to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards.

(3) Allow the State to reimburse law enforcement officers or other appropriate employees of local government for the costs of transportation of a juvenile to and from any juvenile detention facility.

(4) Seek funding for juvenile detention services from federal sources, and accept gifts of funds from public or private sources. (1998-202, ss. 1(b), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b).)

§§ 143B-532 through 143B-534: Reserved for future codification purposes.

Part 4. Juvenile Court Services.

§ 143B-535. Duties and powers of chief court counselors.

The chief court counselor in each district appointed under G.S. 143B-516(b)(15) may:

(1) Appoint court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.
(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.
(3) Provide in-service training for staff as required by the Department.
(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services. (1998-202, ss. 1(b), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b).)

§ 143B-536. Duties and powers of juvenile court counselors.

As the court or the chief court counselor may direct or require, all juvenile court counselors shall have the following powers and duties:

(1) Secure or arrange for any information concerning a case that the court may require before, during, or after the hearing.
(2) Prepare written reports for the use of the court.
(3) Appear and testify at court hearings.
(4) Assume custody of a juvenile as authorized by G.S. 7B-1900, or when directed by court order.
(5) Furnish each juvenile on probation or protective supervision and that juvenile's parents, guardian, or custodian with a written statement of the juvenile's conditions of probation or protective supervision, and consult with the juvenile's parents, guardian, or custodian so that they may help the juvenile comply with the conditions.
(6) Keep informed concerning the conduct and progress of any juvenile on probation or under protective supervision through home visits or conferences with the parents or guardian and in other ways.
(7) See that the juvenile complies with the conditions of probation or bring to the attention of the court any juvenile who violates the juvenile's probation.
(8) Make periodic reports to the court concerning the adjustment of any juvenile on probation or under court supervision.
(9) Keep any records of the juvenile's work as the court may require.
(10) Account for all funds collected from juveniles.
(11) Serve necessary court documents pertaining to delinquent and undisciplined juvenile matters.
(12) Assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public or the juvenile, and when

necessary to carry out the responsibilities of court counselors under this section and under Chapter 7B of the General Statutes.
(13) Use reasonable force and restraint necessary to secure custody assumed under subdivision (12) of this section.
(14) Provide supervision for a juvenile transferred to the counselor's supervision from another court or another state, and provide supervision for any juvenile released from an institution operated by the Department when requested by the Department to do so.
(15) Assist in the development of post-release supervision and the supervision of juveniles.
(16) Have any other duties as the court may direct. (1998-202, ss. 1(b), 2(d), 2(e), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b).)

§§ 143B-537 through 143B-539: Reserved for future codification purposes.

Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

§ 143B-540. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

(a) The Department shall implement the comprehensive juvenile delinquency and substance abuse prevention plan developed by the Office of Juvenile Justice and shall coordinate with County Councils for implementation of a continuum of services and programs at the community level.

The Department shall ensure that localities are informed about best practices in juvenile delinquency and substance abuse prevention.

(b) The plan shall contain the following:
(1) Identification of the risk factors at the developmental stages of a juvenile's life that may result in delinquent behavior.
(2) Identification of the protective factors that families, schools, communities, and the State must support to reduce the risk of juvenile delinquency.
(3) Programmatic concepts that are effective in preventing juvenile delinquency and substance abuse and that should be made available as basic services in the communities, including:
a. Early intervention programs and services.
b. In-home training and community-based family counseling and parent training.
c. Adolescent and family substance abuse prevention services, including alcohol abuse prevention services, and substance abuse education.
d. Programs and activities offered before and after school hours.
e. Life and social skills training programs.
f. Classes or seminars that teach conflict resolution, problem solving, and anger management.
g. Services that provide personal advocacy, including mentoring relationships, tutors, or other caring adult programs.

(c) The Department shall cooperate with all other affected State agencies and entities in implementing this section. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§§ 143B-541, 143B-542: Reserved for future codification purposes.

Part 6. Juvenile Crime Prevention Councils.

§ 143B-543. Legislative intent.

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to training schools and to provide community-based delinquency and substance abuse prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-544. Creation; method of appointment; membership; chair and vice-chair.

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of commissioners of a county shall appoint a Juvenile Crime Prevention Council. Each County Council is a continuation of the corresponding Council created under G.S. 147-33.61. The County Council shall consist of not more than 25 members and should include, if possible, the following:

(1) The local school superintendent, or that person's designee;
(2) A chief of police in the county;
(3) The local sheriff, or that person's designee;
(4) The district attorney, or that person's designee;
(5) The chief court counselor, or that person's designee;
(6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
(7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
(8) The county manager, or that person's designee;
(9) A substance abuse professional;
(10) A member of the faith community;
(11) A county commissioner;
(12) A person under the age of 21;
(13) A juvenile defense attorney;
(14) The chief district court judge, or a judge designated by the chief district court judge;
(15) A member of the business community;
(16) The local health director, or that person's designee;
(17) A representative from the United Way or other nonprofit agency;
(18) A representative of a local parks and recreation program; and
(19) Up to seven members of the public to be appointed by the board of commissioners of a county.

The board of commissioners of a county shall modify the County Council's membership as necessary to ensure that the members reflect the racial and socioeconomic diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council under subsection (a) of this section. The membership shall be representative of each participating county.

(c) The members of the County Council shall elect annually the chair and vice-chair. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-545. Terms of appointment.

Each member of a County Council shall serve for a term of two years, except for initial terms as provided in this section. Each member's term is a continuation of that member's term under G.S. 147-33.62. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-544(a) were appointed for an initial term ending on June 30, 2000. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-544(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001, and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1. (1998-202, s. 1(b); 1999-423, s. 15; 2000-137, s. 1(b).)

Editor's Note. — Section 147-33.62, referred to above, was repealed by Session Laws 2000-137, which enacted this article.

§ 143B-546. Vacancies; removal.

Appointments to fill vacancies shall be for the remainder of the former member's term.

Members shall be removed only for malfeasance or nonfeasance as determined by the board of county commissioners. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-547. Meetings; quorum.

County Councils shall meet at least bimonthly, or more often if a meeting is called by the chair.

A majority of members constitutes a quorum. (1998-202, s. 1(b); 1999-423, s. 16; 2000-137, s. 1(b).)

§ 143B-548. Compensation of members.

Members of County Councils shall receive no compensation but may receive a per diem in an amount established by the board of county commissioners. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-549. Powers and duties.

(a) Each County Council shall review annually the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of county commissioners for its approval. Upon the county's authorization, the plan shall be submitted to the Department for final approval and subsequent implementation.

(b) Each County Council shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

(c) On an ongoing basis, each County Council shall:

(1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs.

(2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding.

(3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem.

(4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments.

(5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families. These services may include court-ordered parenting responsibility classes.

(6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-550. Funding for programs.

(a) Annually, the Department shall develop and implement a funding mechanism for programs that meet the standards developed under this Part. The Department shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. — The Department shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.

(2) Use a formula for the distribution of funds. — A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternative services to juveniles in their communities.

(3) Allow and encourage local flexibility. — A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternative funds.

(4) Combine resources. — Counties shall be allowed and encouraged to combine resources and services.

(b) The Department shall adopt rules to implement this section. The Department shall provide technical assistance to County Councils and shall require them to evaluate all State-funded programs and services on an ongoing and regular basis. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§§ 143B-551 through 143B-555: Reserved for future codification purposes.

Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

§ 143B-556. Creation of Council; purpose; members; duties.

(a) There is created the State Advisory Council on Juvenile Justice and Delinquency Prevention. The State Council shall be located within the Department for organizational, budgetary, and administrative purposes.

(b) The purpose of the State Council is to review and advise the Department in the development of a comprehensive interagency plan to reduce juvenile delinquency and substance abuse and to coordinate efforts among State agencies providing services and supervision to juveniles who are at risk of delinquency and for juveniles who have been adjudicated of delinquent and undisciplined behavior.

(c) The State Council shall consist of 20 members as follows:

(1) The Governor shall appoint five persons, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice issues.

(2) The Chief Justice of the Supreme Court shall appoint four persons.

(3) The following persons, or their designees, shall serve ex officio:

a. The Governor.
b. The Chief Justice of the Supreme Court.
c. The President Pro Tempore of the Senate.
d. The Speaker of the House of Representatives.
e. The Director of the Administrative Office of the Courts.
f. The Superintendent of Public Instruction.
g. The Secretary of Administration.
h. The Secretary of Health and Human Services.
i. The Secretary of Correction.
j. The Secretary of Crime Control and Public Safety.
k. The President of The University of North Carolina.

(d) Initial members, other than ex officio members, who were appointed under former G.S. 147-33.70 and whose terms began January 1, 1999, shall serve for terms as follows:

(1) Three members appointed by the Governor shall serve for terms of two years and two members for terms of three years.

(2) Two members appointed by the Chief Justice of the Supreme Court shall serve for terms of two years and two members for terms of three years.

Thereafter, members, other than ex officio members, shall serve for two-year terms. There is no prohibition against initial members being reappointed.

(e) The Governor and Chief Justice of the Supreme Court shall serve as cochairs of the State Council.

(f) A vacancy on the State Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) State Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) The chairs shall convene the Council. Meetings shall be held as often as necessary but not less than four times a year.

(j) A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council is necessary for action to be taken by the Council. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-557. Powers and duties of the Council.

The State Council shall have the following powers and duties:

(1) Advise the Department in the review of the State's juvenile justice planning, the development of the community juvenile justice councils, and the development of a formula for the distribution of funds to Juvenile Crime Prevention Councils.

(2) Advise all State agencies serving juveniles for the purpose of developing a consistent philosophy with regard to providing services to juveniles and promoting collaboration and the efficient and effective delivery of services to juveniles and families through State, local, and district programs and fully address problems of collaboration across State agencies with the goal of serving juveniles.

(3) Review and comment on juvenile justice, delinquency prevention, and juvenile services grant applications prepared for submission under any federal grant program by any governmental entity of the State.

(4) Review the juvenile justice system's operation and prioritization of funding needs.

(5) Review the progress and accomplishment of State and local juvenile justice, delinquency prevention, and juvenile services projects.

(6) Develop recommendations concerning the establishment of priorities and needed improvements with respect to juvenile justice, delinquency prevention, and juvenile services and report its recommendations to the General Assembly on or before March 1 each year.

(7) Review and comment on the proposed budget for the Department. (1998-202, s. 1(b); 2000-137, s. 1(b).)

Chapter 146.

State Lands.

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 7.

Dispositions.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

Article 2.

Dispositions.

§ 146-6. Title to land raised from navigable water.

OPINIONS OF ATTORNEY GENERAL

Title to Raised Land Vested in State. — Although good title to beach property was conveyed to a town through a special legislative grant in 1939, recent publicly funded projects, which raised land above the mean high water mark by hydraulic dredging or deposition of spoil or sand, would have vested title in the State by operation of law pursuant to this section. See opinion of Attorney General to P.A. Wojciechowski, Division of Marine Fisheries, 1998 N.C.A.G. 18 (4/6/98).

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 6.

Acquisitions.

§ 146-22. All acquisitions to be made by Department of Administration.

OPINIONS OF ATTORNEY GENERAL

Section 116-40.6(d) does not exempt the Medical Faculty Practice Plan from the requirements contained in this section and § 146-27 pertaining to consultation with the Joint Legislative Commission on Governmental Operations and approval by the Governor and Council of State with regard to acquisitions and dispositions of real property. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

§ 146-22.1. Acquisition of property.

CASE NOTES

Illustrative Case. — State had express statutory authority, and its statement of public use was sufficient, to condemn defendant's one-fifth land interest, held as tenant in common with State, as necessary and convenient for the operation and maintenance of government-owned impoundments. State v. Coastland Corp., 134 N.C. App. 269, 517 S.E.2d 655 (1999), cert. denied, 351 N.C. 111, — S.E.2d — (1999).

§ 146-23. Agency must file statement of needs; Department must investigate.

CASE NOTES

Compliance Shown. — Affidavits and exhibits, together with Secretary of Administration's findings, indicated that statutory requirements were addressed, and the trial court reasonably determined that DOA properly investigated "all aspects of the requested acquisition" in compliance with this section. State v. Coastland Corp., 134 N.C. App. 269, 517 S.E.2d 655 (1999), cert. denied, 351 N.C. 111, — S.E.2d — (1999).

§ 146-24.1. The power of eminent domain.

CASE NOTES

Illustrative Case. — State had express statutory authority, and its statement of public use was sufficient, to condemn defendant's one-fifth land interest, held as tenant in common with State, as necessary and convenient for the operation and maintenance of government-owned impoundments. State v. Coastland Corp., 134 N.C. App. 269, 517 S.E.2d 655 (1999), cert. denied, 351 N.C. 111, — S.E.2d — (1999).

Article 7.

Dispositions.

§ 146-27. The role of the Department of Administration in sales, leases, and rentals.

OPINIONS OF ATTORNEY GENERAL

Section 116-40.6(d) does not exempt the Medical Faculty Practice Plan from the requirements contained in § 146-22 and this section pertaining to consultation with the Joint Legislative Commission on Governmental Operations and approval by the Governor and Council of State with regard to acquisitions and dispositions of real property. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

§ 146-30. Application of net proceeds.

(a) The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty-five thousand dollars ($25,000), then such exchange may not be made without consultation with the Joint Legislative Commission on Governmental Operations.

(b) For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State; and
(2) Repealed by Session Laws 1993, c. 553, s. 52.2.
(3) A service charge to be paid into the State Land Fund.

(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by G.S. 116-198.33(4), that are designated as part of the Horace Williams Campus as defined by G.S. 116-198.33(4a), or that are designated as part of a Millennial Campus as defined by G.S. 116-198.33(4b). All net proceeds of those dispositions are governed by G.S. 116-36.5.

(c) The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture and Consumer Services shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services, to be used for such specific capital improvement projects or other purposes as are provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Environment and Natural Resources shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. In the Capital Improvement Appropriations Act, line items for purchase of park and agricultural lands will be established for use by the Departments of Administration and Agriculture. The use of such funds for any specific capital improvement project or land acquisition is subject to approval by the Director of the Budget. No other use may be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be demonstrated and funds in the capital improvement accounts are insufficient. Provided further, the net proceeds derived from the sale of any portion of the land in or around the unincorporated area known as Butner on or after

July 1, 1980, shall be deposited with the State Treasurer in a capital improvement account to the credit of the Hospital to provide water and sewers and to bring those streets in the unincorporated area known as Butner not on the State highway system up to standards adequate for acceptance on the system, according to a plan adopted by the Department of Administration, and the Office of State Budget, Planning, and Management, with the approval of the Board of County Commissioners of Granville County, to build industrial access roads to industries on the Butner lands, to construct new city streets on the Butner lands, extend water and sewer service on the Butner lands, and repair storm drains on the Butner lands. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, s. 30; 1977, c. 771, s. 4; c. 1012; 1979, c. 608, s. 1; 1981, c. 859, s. 23.4; c. 1127, s. 33; 1981 (Reg. Sess., 1982), c. 1282, s. 24; 1983, c. 717, ss. 86, 86.1, 86.2, 87; c. 761, s. 166; 1983 (Reg. Sess., 1984), c. 1034, s. 164; c. 1116, s. 97(d); 1989, c. 727, s. 218(155); c. 799, s. 26; 1993, c. 321, s. 260.1; c. 553, s. 52.2; 1997-261, s. 109; 1997-443, s. 11A.119(a); 1998-159, s. 4; 1999-234, s. 8; 2000-140, s. 93.1(a); 2000-177, s. 9.)

Effect of Amendments. —

Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in the last sentence of subsection (c).

Session Laws 2000-177, s. 9, effective August 2, 2000, in the first sentence of subsection (b1), deleted "or" following "G.S. 116-198.33(4)" and added "or that are designated as part of a Millennial Campus as defined by G.S. 116-198.33(4b)."

Chapter 147.

State Officers.

Article 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

(a) The salary of the Governor shall be one hundred eighteen thousand four hundred thirty dollars ($118,430) annually, payable monthly.

(b) He shall be paid annually the sum of eleven thousand five hundred dollars ($11,500) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly.

(c) In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by a warrant drawn on the State Treasurer. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C.S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5; 1979, 2nd Sess., c. 1137, s. 31; 1981, c. 1127, s. 7; 1983, c. 761, ss. 194, 195; c. 913, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 217; 1985, c. 479, s. 215; 1985 (Reg. Sess., 1986), c. 1014, s. 20; 1987, c. 738, s. 11; 1987 (Reg. Sess., 1988), c. 1086, ss. 6, 172; 1989, c. 752, ss. 23(a), (b), 167; 1991 (Reg. Sess., 1992), c. 900, ss. 32(a), (b), 182; 1993, c. 321, s. 48; 1993 (Reg. Sess., 1994), c. 769, s. 7.1; 1995, c. 507, s. 7.1(a); 1996, 2nd Ex. Sess., c. 18, s. 28(a); 1997-443, s. 33(a); 1998-153, s. 3(a); 1999-237, s. 28(a); 2000-67, s. 26(a).)

Editor's Note. —

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-67, s. 26(a), effective July 1, 2000, substituted "one hundred eighteen thousand four hundred thirty dollars ($118,430) annually" for "one hundred thirteen thousand six hundred fifty-six dollars ($113,656) annually" in subsection (a).

§ 147-12. Powers and duties of Governor.

Editor's Note. — Sections 4.1 to 4.4 of Session Laws 1999-463, the Hurricane Floyd Recovery Act of 1999, authorize the Governor to establish new programs, to expand existing programs, and to modify existing programs to provide necessary and appropriate relief and assistance from the effects of Hurricane Floyd and to expend funds from the Hurricane Floyd Recovery Fund to implement these programs; authorize the Governor to transfer funds from the Hurricane Floyd Recovery Fund to federal agencies and to local governments; authorize the Governor to establish time-limited positions to implement the provisions of the act; and authorize the Governor to establish advisory councils to advise State agencies on Hurricane Floyd recovery efforts and to ensure input from representatives of affected communities and groups.

Article 3C.

Office of Juvenile Justice.

§§ 147-33.30 through 147-33.71: Repealed by Session Laws 2000-137, s. 1(a), effective July 20, 2000.

Cross References. — For the Department of Juvenile Justice and Delinquency Prevention, see § 143B-511 et seq.

Editor's Note. — Repealed §§ 147-33.33, 147-33.34, 147-33.40, 147-33.48, 147-33.49, 147-33.52 to 147-33.54, 147-33.56 to 147-33.59, 147-33.68, and 147-33.69 had been reserved for future codification purposes.

§§ 147-33.72 through 147-33.74: Reserved for future codification purposes.

Article 3D.

Office of Information Technology Services.

Part 1. Transfer and Organization of Office.

§ 147-33.75. Transfer to the Office of the Governor.

(a) The Office of Information Technology Services ("Office") of the Department of Commerce and the Information Resource Management Commission are hereby transferred to the Office of the Governor by a Type II transfer, as defined in G.S. 143A-6.

(b) The Governor has the authority, powers, and duties over the Office that are assigned to the Governor and the head of department pursuant to Article 1 of Chapter 143B of the General Statutes, G.S. 143A-6(b), and the Constitution and other laws of this State. (1999-434, s. 9; 2000-174, s. 2.)

Editor's Note. — Session Laws 2000-174, s. 3, made this Article effective September 1, 2000.

Session Laws 2000-174, s. 1 repealed Part 16 of Article 10 of Chapter 143B, § 143B-472.40 et seq. Session Laws 2000-174, s. 1(b) enacted a new Article 3D of Chapter 147. Historical citations to the sections in the former Part 16 of Article 10 of Chapter 143B have been added to the corresponding sections in new Article 3D.

The sections in Article 3D have been numbered at the direction of the Revisor of Statutes, the section numbers in Session Laws 2000-174, s. 1(b) having been §§ 147-33.75 to 147-33.99.

§ 147-33.76. Head of the Office of Information Technology Services; qualification and appointment of State Chief Information Officer.

(a) The Office of Information Technology Services shall be managed and administered by the State Chief Information Officer. The State Chief Information Officer shall be qualified by education and experience for the office and shall be appointed by the Governor after consultation with the Senate Committee on Information Technology and the House Committee on Technology meeting jointly (or by similar committees designated by the rules of each house).

(b) The Governor shall submit the name of the person to be appointed for review by the entities specified in subsection (a) of this section.

(c) The salary of the State Chief Information Officer shall be set by the General Assembly in the Current Operations Appropriations Act. The State Chief Information Officer shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.77. Office of Information Technology Services; organization and operation.

(a) The State Chief Information Officer may appoint a Chief Deputy Information Officer. The salary of the Chief Deputy Information Officer shall be set by the State Chief Information Officer. The State Chief Information Officer may appoint all employees, including legal counsel, necessary to carry out the powers and duties of the office. These employees shall be subject to the State Personnel Act.

(b) All employees of the office shall be under the supervision, direction, and control of the State Chief Information Officer. Except as otherwise provided by this Article, the State Chief Information Officer may assign any function vested in the State Chief Information Officer or the Office of Information Technology Services to any subordinate officer or employee of the office.

(c) The State Chief Information Officer may, subject to the provisions of G.S. 147-64.7(b)(2), obtain the services of independent public accountants, qualified management consultants, and other professional persons or experts to carry out powers and duties of the office.

(d) The State Chief Information Officer shall have legal custody of all books, papers, documents, and other records of the office.

(e) The State Chief Information Officer shall be responsible for the preparation of and the presentation of the office budget request, including all funds requested and all receipts expected for all elements of the budget.

(f) The State Chief Information Officer may adopt regulations for the administration of the office, the conduct of employees of the office, the distribution and performance of business, the performance of the functions assigned to the State Chief Information Officer and the Office of Information Technology Services, and the custody, use, and preservation of the records, documents, and property pertaining to the business of the office. (1989, c. 239, s. 5; c. 770, s. 60; 1989 (Reg. Sess., 1990), c. 1024, s. 36; 1991 (Reg. Sess., 1992), c. 900, s. 14(g); c. 1030, s. 51.14; ; 1997-148, ss. 5, 6; 1999-347, s. 2; 1999-434, s. 27; 2000-174, s. 2.)

§ 147-33.78. Information Resource Management Commission.

(a) Creation; Membership. — The Information Resource Management Commission is established and shall be located within the Office for organizational, budgetary, and administrative purposes. The Commission consists of the following members:

(1) Four members of the Council of State, appointed by the Governor.
(2) The Secretary of State.
(3) The Secretary of Administration.
(4) The State Budget Officer.
(5) Two members of the Governor's cabinet, appointed by the Governor.
(6) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
(7) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
(8) The Chair of the Information Technology Management Advisory Council.
(9) The Chair of the Criminal Justice Information Network Governing Board.
(10) The State Controller.
(11) The Director of the Administrative Office of the Courts or the Director's designee.
(12) The President of The University of North Carolina or the President's designee.
(13) The President of the Community Colleges System Office or the President's designee.
(14) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee, who shall be a nonvoting member.
(15) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee, who shall be a nonvoting member.
(16) The State Chief Information Officer, who shall be a nonvoting member.

Members of the Commission shall not be employed by or serve on the board of directors or other corporate governing body of any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

The initial appointed members of the Commission shall be the members appointed to the Information Resource Management Commission who are serving unexpired terms as of July 1, 2000, who shall serve for a period equal to the remainder of their current terms on the Information Resource Management Commission. Upon the expiration of the current terms of the appointed members, their successors shall be appointed for four-year terms, commencing July 1. Members of the Governor's cabinet shall be disqualified from completing a term of service on the Commission if they are no longer cabinet members. Members of the Council of State shall be disqualified from completing a term of service on the Commission if they are no longer members of the Council of State.

Vacancies in the two legislative appointments shall be filled as provided in G.S. 120-122.

The Commission chair shall be elected in the first meeting of each calendar year from among the appointees of the Governor from the Council of State and shall serve a term of one year. The State Chief Information Officer shall be secretary to the Commission.

No member of the Information Resource Management Commission shall vote on an action affecting solely his or her own State agency.

(b) Powers and Duties. — The Commission has the following powers and duties:

(1) To develop, approve, and publish a statewide information technology strategy covering the current and following biennium that shall be updated annually and shall be submitted to the General Assembly on the first day of each regular session.

(2) To develop, approve, and sponsor statewide technology initiatives and to report on those initiatives in the annual update of the statewide information technology strategy.

(3) To review and approve biennially the information technology plans of the executive agencies and the Administrative Office of the Courts. This review shall include plans for the procurement and use of personal computers and workstations.

(4) To recommend to the Governor and the Office of State Budget, Planning, and Management the relative priorities across executive agency and Administrative Office of the Courts information technology plans.

(5) To issue certification of any State agency information technology project that requires or is expected to require the expenditure of funds in excess of five hundred thousand dollars ($500,000), whether the project is undertaken in a single phase or component or in multiple phases or components. The certification shall be issued when the Commission determines that the project complies with Commission policies, standards, and procedures. The Commission shall promptly report each certification to the Office of State Budget, Planning, and Management, the Office of the State Controller, the Chairs of the Legislative Committees on Information Technology, and the Cochairs of the Joint Legislative Commission on Governmental Operations. No State agency, other than The University of North Carolina or any of its constituent institutions, shall allocate or expend funds in excess of five hundred thousand dollars ($500,000) on any information technology project without prior certification as required by this subsection. If an agency cannot determine whether a project or series of projects will require certification, the agency shall seek an opinion from the Commission. Upon review, the Commission may determine that a project is exempt from certification and shall advise the agency of its determination.

(6) To establish a quality assurance policy for all agency information technology projects, information systems training programs, and information systems documentation. If at any time a certified agency information technology project is not in compliance with Commission policies, standards, or procedures, the Commission may suspend project certification and shall report the suspension to the Office of the State Controller, the Office of State Budget, Planning, and Management, the Chairs of the Legislative Committees on Information Technology, and the Cochairs of the Joint Legislative Commission on Governmental Operations. Upon recommendation of the Commission, the Joint Legislative Commission on Governmental Operations may request the State Budget Office and the State Controller to take appropriate remedial action, up to and including the suspension of appropriations or the nonrelease of funds to the project.

(7) To establish and enforce a quality review and expenditure review procedure for major agency information technology projects.
(8) To review and approve expenditures from appropriations made to the Office of State Budget, Planning, and Management for the purpose of creating a Computer Reserve Fund.
(9) To develop and promote technical requirements for the fair and competitive procurement of information technology in cooperation with the Office of Information Technology Services where different information technology hardware, software, and networks operate together easily and reliably, while considering the cost-effectiveness of managing these assets.

(c) Meetings. — The Information Resources Management Commission shall adopt bylaws containing rules governing its meeting procedures. The Information Resources Management Commission shall meet at least monthly. (1983, c. 267, s. 2; 1989, c. 239, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 14(a); c. 1030, s. 51.14; 1996, 2nd Ex. Sess., c. 18, s. 23.3(b); 1997-148, ss. 2, 6; 1997-443, ss. 18.17(a), 24(a); 1998-212, s. 16(a); 1999-347, ss. 3, 5; 1999-434, ss. 11, 18, 28; 1999-456, s. 62; 2000-140, s. 93.1(i); 2000-174, s. 2.)

Cross References. — For provision regarding "useful life guidelines, see § 115C-529.

Effect of Amendments. — Session Laws 2000-140, s. 93.1(i), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Planning" in subdivisions (b)(4), (b)(5), (b)(6), and (b)(8).

§ 147-33.79. Information Resources Management Commission staff.

(a) There is established in the Office an independent staff for the Information Resources Management Commission. The staff shall consist of an executive director and such other professional, administrative, technical, and clerical personnel as authorized by the General Assembly as may be necessary to assist the Commission in carrying out its powers and duties.

(b) All independent staff shall be appointed, supervised, and directed by the Commission. The executive director shall be exempt from the provisions of Chapter 126 of the General Statutes, except for Articles 6 and 7 of Chapter 126 of the General Statutes. All other staff personnel shall be subject to the provisions of Chapter 126 of the General Statutes. The independent staff shall not be subject to the supervision, direction, or control of the Office.

(c) Except for the executive director, salaries and compensation of all staff personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.

(d) Expenses of the Commission and the salaries of the independent staff shall be paid out of funds from receipts available to the Office of Information Technology Services as requested by the Commission. (1999-434, s. 24; 2000-174, s. 2.)

Editor's Note. — Session Laws 1999-434, s. 31, had provided that the Information Resources Management Commission was authorized to establish and fill up to five staff positions in accordance with the provisions of former § 143B-472.41A (see now this section) and that these positions should be transferred from existing positions authorized for the Office of Information Technology Services.

Part 2. General Powers and Duties.

§ 147-33.80. Exempt agencies.

Except as otherwise specifically provided by law, this Article shall not apply to the General Assembly, the Judicial Department, or The University of North Carolina and its constituent institutions. These agencies may elect to participate in the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.81. Definitions.

As used in this Article:

(1) "Distributed information technology assets" means hardware, software, and communications equipment not classified as traditional mainframe-based items, including personal computers, local area networks (LANs), servers, mobile computers, peripheral equipment, and other related hardware and software items.

(2) "Information technology" means electronic data processing goods and services and telecommunications goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes.

(3) "Information technology enterprise management" means a method for managing distributed information technology assets from acquisition through retirement so that total ownership costs (purchase, operation, maintenance, disposal, etc.) are minimized while maximum benefits are realized.

(4) "Information technology portfolio management" means a business-based approach for analyzing and ranking potential technology investments and selecting those investments that are the most cost-effective in supporting the strategic business and program objectives of the agency.

(5) "Office" means the Office of Information Technology Services as established in this Article. (1999-434, s. 9; 2000-174, s. 2.)

§ 147-33.82. Powers and duties of the Office of Information Technology Services.

(a) The Office of Information Technology Services shall:

(1) Procure all information technology for State agencies, as provided in Part 4 of this Article.

(2) Submit for approval of the Information Resources Management Commission all rates and fees for common, shared State government-wide technology services provided by the Office.

(3) Submit for approval of the Information Resources Management Commission recommended State government-wide, enterprise-level policies for information technology.

(4) Develop standards, procedures, and processes to implement policies approved by the Information Resources Management Commission.

(5) Assure that State agencies implement and manage information technology portfolio-based management of State information technology

resources, in accordance with the direction set by the State Chief Information Officer.

(6) Assure that State agencies implement and manage information technology enterprise management efforts of State government, in accordance with the direction set by the State Chief Information Officer.

(7) Provide recommendations to the Information Resources Management Commission for its biennial technology strategy and to develop State government-wide technology initiatives to be approved by the Information Resources Management Commission.

(8) Develop a project management, quality assurance, and architectural review process that adheres to the Information Resources Management Commission's certification program and portfolio-based management initiative.

(9) Establish and utilize the Information Technology Management Advisory Council to consist of representatives from other State agencies to advise the Office on information technology business management and technology matters.

(b) Notwithstanding any other provision of law, local governmental entities may use the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office. For purposes of this subsection, "local governmental entities" includes local school administrative units, as defined in G.S. 115C-5, and community colleges. Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts established by the Office. Any other State entities may also use the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.83. Information resources centers and services.

(a) With respect to all executive departments and agencies of State government, except the Department of Justice if they do not elect at their option to participate, the Office of Information Technology Services shall have all of the following powers and duties:

(1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the Information Resources Management Commission decides it is advisable from the standpoint of efficiency and economy to establish these centers and services.

(2) With the approval of the Information Resources Management Commission, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services.

(3) With the approval of the Information Resources Management Commission, to require any department served to transfer to the Office ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services.

(4) With the approval of the Information Resources Management Commission, to adopt reasonable rules for the efficient and economical management and operation of the shared centers, services, and the integrated State telecommunications network.

(5) With the approval of the Information Resources Management Commission, to adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in

the departments affected by this section to facilitate more efficient and economic use of information technology in these departments.

(6) To develop and promote training programs to efficiently implement, use, and manage information technology resources.

(7) To provide cities, counties, and other local governmental units with access to the Office of Information Technology Services, information resource centers and services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this section until safeguards for the data's security satisfactory to the department head and the State Chief Information Officer have been designed and installed and are fully operational. Nothing in this section may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This section does not affect the provisions of G.S. 147-64.6, 147-64.7, or 147-33.91. Notwithstanding any other provision of law, the Office of Information Technology Services shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission. (2000-174, s. 2.)

§ 147-33.84. Deviations authorized for Department of Revenue.

(a) The Department of Revenue is authorized to deviate from any provision in G.S. 147-33.83(a) that requires departments or agencies to consolidate information processing functions on equipment owned, controlled, or under custody of the Office of Information Technology Services. All deviations pursuant to this section shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission and shall be consistent with available funding.

(b) The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements, and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the Office of Information Technology Services or the Information Resources Management Commission, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission. The Department of Revenue and the Office of Information Technology Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

(c) The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted practices for disaster recovery in the information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability. (2000-174, s. 2.)

§ 147-33.85. Information technology portfolio-based management.

(a) The purposes of information technology portfolio-based management are to:

(1) Ensure agencies link agency information technology investments with business plans.
(2) Facilitate risk assessment of information technology projects and investments.
(3) Ensure agencies justify information technology investments on the basis of sound business cases.
(4) Ensure agencies facilitate development and review of information technology performance related to business operations.
(5) Identify projects that can cross agency and program lines in order to leverage resources.
(6) Assist in State government-wide planning for common, shared information technology infrastructure.

(b) The Office shall coordinate with the Office of State Budget, Planning, and Management and the Office of State Budget, Planning, and Management to integrate agency strategic and business planning, technology planning and budgeting, and project expenditure processes into the Office's information technology portfolio-based management. The Office shall provide recommendations for agency annual budget requests for information technology investments, projects, and initiatives to the Office of State Budget, Planning, and Management.

(c) In cooperation with State agencies, the Office shall conduct and maintain a continuous inventory of each State agency's current and planned investments in information technology, a compilation of information about these assets, and the total life cycle costs of these assets. In implementing the provisions of this subsection, the Office shall submit State government-wide policies for review and approval to the Information Resources Management Commission. The Office shall consult with the Office of the State Controller to establish and implement the State government-wide information technology inventory. The Office shall develop and implement State government-wide standards, processes, and procedures for the required inventory and for the management of the State government-wide information technology portfolio. State agencies shall participate in the information technology portfolio management and shall comply with the standards and processes established by the Office in accordance with this subsection. The provisions of this subsection shall not relieve any department, institution, or agency of the State government from accountability for equipment, materials, supplies, and tangible and intangible personal property under its control.

(d) No State agency information technology project shall proceed without the prior certification by the Information Resources Management Commission of the project. The Information Resources Management Commission may establish thresholds at an agency level based on project cost, potential project risk, or agency size and budget. (1999-434, s. 10; 2000-140, ss. 93.1(i), (k); 2000-174, s. 2.)

Editor's Note. — The name change directions in Session Laws 2000-140, ss. 93.1(i) and 93.1(k), resulted in the duplicate reference to the Office of State Budget, Planning, and Management in the first sentence of subsection (b). Subsection (b) is set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2000-140, ss. 93.1(i) and 93.1(k), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" and for "Office of State Planning" in the first sentence of subsection (b).

§ 147-33.86. Enterprise management of information technology assets.

(a) The purpose of enterprise management is to create a plan and implement a State government-wide approach for managing distributed information technology assets to minimize total life-cycle costs of assets, defined as total ownership costs from acquisition through retirement, while realizing maximum benefits for transacting the State's business and delivering services to its citizens.

(b) With input and recommendations from State agencies, the Office shall develop a plan for the State government-wide management of distributed information technology assets. The plan shall prescribe the State government-wide infrastructure and services for managing these assets. The plan shall be submitted to the Information Resources Management Commission for approval.

(c) Upon receiving approval by the Information Resources Management Commission, the Office shall ensure agency implementation of the plan, including the development of appropriate standards, processes, and procedures. The implementation effort shall follow Information Resources Management Commission project-reporting policies. State agencies must participate in the enterprise management of information technology assets and must comply with the standards and processes of the Office. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.87. Financial reporting and accountability for information technology investments and expenditures.

The Office of Information Technology Services, the Office of State Budget, Planning, and Management, and the Office of the State Controller shall jointly develop a system for budgeting and accounting of expenditures for information technology operations, services, projects, infrastructure, and assets. The system shall include hardware, software, personnel, training, contractual services, and other items relevant to information technology, and the sources of funding for each. This system must integrate seamlessly with the enterprise portfolio management system. Annual reports regarding information technology shall be coordinated by the Office with the Office of State Budget, Planning, and Management and the Office of the State Controller, and submitted to the Governor, General Assembly, and the Information Resources Management Commission on or before October 1 of each year. (1999-434, s. 10; 2000-140, s. 93.1(i); 2000-174, s. 2.)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(i), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

§ 147-33.88. Information technology reports.

(a) The Office shall develop an annual budget for review and approval by the Information Resources Management Commission prior to April 1 of each year. A copy of the approved budget shall be submitted to the Joint Select Committee on Information Technology and the Fiscal Research Division.

(b) The Office shall report to the Joint Select Committee on Information Technology and the Fiscal Research Division on the Office's Internal Service Fund on a quarterly basis, no later than the first day of the second month following the end of the quarter. The report shall include current cash balances, line-item detail on expenditures from the previous quarter, and anticipated expenditures for the upcoming quarter, projected year-end balance, and the status report on personnel position changes including new positions created and existing positions eliminated. The Office spending reports shall comply with the State Accounting System object codes. (1999-434, s. 10; 2000-174, s. 2.)

§§ 147-33.89, 147-33.90: Reserved for future codification purposes.

Part 3. Telecommunications Services.

§ 147-33.91. Telecommunications services; duties of State Chief Information Officer with respect to State agencies.

With respect to State agencies, the State Chief Information Officer shall exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of those agencies. In discharging that responsibility, the State Chief Information Officer may in cooperation with affected State agency heads, do such of the following things as the State Chief Information Officer deems necessary and advisable:

(1) Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
   a. Central telephone systems and telephone networks;
   b. Teleprocessing systems;
   c. Teletype and facsimile services;
   d. Satellite services;
   e. Closed-circuit TV systems;
   f. Two-way radio systems;
   g. Microwave systems; and
   h. Related systems based on telecommunication technologies.

(2) With the approval of the Information Resources Management Commission, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in subdivision (1) of this section.

(3) Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

(4) Perform traffic analysis and engineering for all telecommunications services and systems listed in subdivision (1) of this subsection.

(5) Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.
(6) Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.
(7) Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.
(8) Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.
(9) Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including, but not limited to, the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.
(10) Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.
(11) Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the Office of Information Technology Services training to users within State agencies in telecommunications technology and systems.
(12) Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens“ rights to privacy and access to information, for the acquisition and use of telecommunications systems, and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.
(13) Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this section.

The provisions of this section shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department. (2000-174, s. 2.)

§ 147-33.92. Telecommunications services for local governmental units and other entities.

(a) The State Chief Information Officer shall provide cities, counties, and other local governmental units with access to a central telecommunications system or service established under G.S. 147-33.91 for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) The State Chief Information Officer shall establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:
(1) Nonprofit educational institutions.
(2) MCNC.
(3) Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina.
(4) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina.

(5) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth in this subsection shall not cause the State, the Office of Information Technology Services, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of Information Technology Services, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the Communications Act of 1934, 47 U.S.C. § 153(h). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth in subdivisions (1) through (5) of this subsection shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer. (2000-174, s. 2.)

§§ 147-33.93, 147-33.94: Reserved for future codification purposes.

Part 4. Procurement of Information Technology.

§ 147-33.95. Procurement of information technology.

(a) Notwithstanding any other provision of law, the Office of Information Technology Services shall procure all information technology for State agencies. For purposes of this section, agency means any department, institution, commission, committee, board, division, bureau, office, officer, or official of the State, unless specifically exempted in this Article. The Office shall integrate technological review, cost analysis, and procurement for all information technology needs of those State agencies in order to make procurement and implementation of technology more responsive, efficient, and cost-effective. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data, similar proprietary information, and security information protected under G.S. 132-6.1(c) may remain confidential.

(b) The Office shall have the authority and responsibility, subject to the provisions of this Part, to:

(1) Purchase or to contract for, by suitable means in conformity with G.S. 143-135.9, all information technology in the State government, or any of its departments, institutions, or agencies covered by this Part, or to authorize any department, institution, or agency covered by this Part to purchase or contract for such information technology.

(2) Establish processes, specifications, and standards which shall apply to all information technology to be purchased, licensed, or leased in the State government or any of its departments, institutions, or agencies covered by this Part.

(3) Comply with the State government-wide technical architecture, as required by the Information Resources Management Commission. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.96. Restriction on State agency contractual authority with regard to information technology; local governments.

(a) All State agencies covered by this Part shall use contracts for information technology acquired by the Office for any information technology required by the State agency that is provided by these contracts. Notwithstanding any other statute, the authority of State agencies to procure or obtain information technology shall be subject to compliance with the provisions of this Part. The Office shall have the authority to exercise the authority of State agencies to procure or obtain information technology as otherwise provided by statute.

(b) Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts offered by the Office. (1999-434, s. 10; 2000-174, s. 210-241.)

§ 147-33.97. Information technology procurement policy; reporting requirements.

(a) Policy. — In order to further the policy of the State to encourage and promote the use of small, minority, physically handicapped, and women contractors in State purchasing of goods and services, all State agencies covered by this Part shall cooperate with the Office in efforts to encourage the use of small, minority, physically handicapped, and women contractors in achieving the purpose of this Part, which is to provide for the effective and economical acquisition, management, and disposition of information technology.

(b) Reporting. — Every State agency that makes a direct purchase of information technology using the services of the Office shall report directly to the Department of Administration all information required by G.S. 143-48(b).

(c) The Department of Administration shall collect and compile the data described in this section and report it annually to the Office. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.98. Unauthorized use of public purchase or contract procedures for private benefit prohibited.

(a) It shall be unlawful for any person, by the use of the powers, policies, or procedures described in this Part or established hereunder, to purchase, attempt to purchase, procure, or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

(1) The department, institution, or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution, or agency involved, or the public benefit or convenience; and

(2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Part or established thereunder.

(c) Any violation of this section is a Class 1 misdemeanor. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.99. Financial interest of officers in sources of supply; acceptance of bribes.

Neither the State Chief Information Officer nor the Chief Deputy State Information Officer shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any information technology, nor in any firm, corporation, partnership, or association furnishing any information technology to the State government, or any of its departments, institutions, or agencies, nor shall either of these persons or any other Office employee accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. Violation of this section is a Class F felony, and any person found guilty of a violation of this section shall, upon conviction, be removed from State office or employment. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.100. Certification that information technology bid submitted without collusion.

The Office shall require bidders to certify that each bid on information technology contracts overseen by the Office is submitted competitively and without collusion. False certification is a Class I felony. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.101. Board of Awards review.

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the Chief State Information Officer, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

(b) Prior to submission of any contract for review by the Board of Awards pursuant to this section for any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State government, including established procurement processes, and compliance with the State government-wide technical architecture as established by the Information Resources Management Commission. (1999-434, s. 10; 2000-174, s. 2)

§ 147-33.102. Penalty for violations; costs.

Any employee or official of the State who violates this Part shall be liable to the State to repay any amount expended in violation of this Part, together with any court costs. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.103. Attorney General contract assistance; rule-making authority.

(a) At the request of the State Chief Information Officer, the Attorney General shall provide legal advice and services necessary to implement this Part.

(b) The State Chief Information Officer is authorized to adopt rules deemed necessary to implement the provisions of this Part. (1999-434, s. 10; 2000-174, s. 2.)

ARTICLE 4.

Secretary of State.

§ 147-36. Duties of Secretary of State.

Editor's Note. —

Session Laws 2000-67, s. 24B.1, provides: "Of the funds appropriated in this act to the Department of the Secretary of State for the 2000-2001 fiscal year, the Department may use up to the sum of eight hundred sixty-eight thousand six hundred sixty-four dollars ($868,664) in recurring funds and one million eight hundred ninty-one thousand four dollars ($1,891,004) in nonrecurring funds for personnel, start-up expenses, and operating costs necessary for the implementation of Senate Bill 1305, 1999 General Assembly, if it becomes law. Prior to using any of these funds or establishing any of the 41 positons authorized by the General Assembly, the Department shall present its plan for implementing Senate Bill 1305, 1999 General Assembly, to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Subcommittees on General Government, and the Joint Select Committee on Information Technology. The Department shall maintain monthly reports on UCC filings and, on a quarterly basis, submit the reports to the House and Senate Appropriations Subcommittees on General Government and the Fiscal Research Division. The reports shall inlcude: the number of filings, the time required to process the filings, the filings per employee ratio, and the actual and projected revenue from filing fees." Senate Bill 1305, 1999 General Assembly, was enacted into law as Session Laws 2000-169.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 147-44: Repealed by Session Laws 1943, c. 48, s. 2.

Editor's Note. — The repeal line above is set out to correct its omission from the main volume.

§ 147-45. Distribution of copies of State publications.

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1

Agency or Institution	Session Laws	Assembly Journals
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture and Consumer Services, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment and Natural Resources, Department of	6	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Health and Human Services, Department of	6	0
Mental Health, Developmental Disabilities, and Substance Abuse Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Juvenile Justice and Delinquency Prevention, Department of	3	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1

Agency or Institution	Session Laws	Assembly Journals
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk — Senate	1	1
Principal Clerk — House	1	1
Reading Clerk — Senate	1	1
Reading Clerk — House	1	1
Sergeant at Arms — House	1	1
Sergeant at Arms — Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library		
AS MANY AS REQUESTED		
Colleges and Universities		
The University of North Carolina System		
Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
University of North Carolina, Pembroke	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1

Agency or Institution	Session Laws	Assembly Journals
Shaw University	1	1
St. Augustine's College	1	1
Johnson C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point University	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, c. 269, s. 1; cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200; 1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285; 1973, c. 476, ss. 48, 84, 128, 138, 143, 193; c. 507, s. 5; c. 731, s. 1; c. 762; c. 798, ss. 1, 2; c. 1262, ss. 10, 38; 1975, c. 19, s. 59; c. 879, s. 46; 1975, 2nd Sess., c. 983, s. 115; 1977, c. 379, s. 1; c. 679, s. 8; c. 771, s. 4; 1979, c. 358, s. 27; 1981, c. 412, ss. 4, 5; 1981 (Reg. Sess., 1982), c. 1348, s. 2; 1983, c. 842; 1987, c. 827, s. 59; 1989, c. 727, s. 223(b); c. 751, s. 9(b); 1991 (Reg. Sess., 1992), c. 959, s. 74; 1993, c. 522, s. 18; c. 553, s. 53; 1995, c. 166, s. 2; c. 509, s. 100; 1995 (Reg. Sess., 1996), c. 603, s. 5; c. 743, s. 22; 1997-443, ss. 11A.118(a), 11A.119(a); 1998-202, s. 4(bb); 2000-137, s. 4(ff).)

Effect of Amendments. — Session Laws 2000-137, s. 4.(ff), effective July 20, 2000, substituted "Juvenile Justice and Delinquency Prevention, Department of" for "Juvenile Justice, Office of" in the table.

ARTICLE 5A.

Auditor.

§ 147-64.7. Authority.

OPINIONS OF ATTORNEY GENERAL

Pursuant to § 147-64.13, the provisions of subdivision (a)(1) of this section supersede the provisions of § 126-24 to the extent they conflict. Specifically, the Auditor's power to examine documents in the course of an authorized audit includes the power to examine confidential employee personnel files relevant to that audit without the consent of the employee or his employer. See opinion of Attorney General to The Honorable Ralph Campbell, Jr., State Auditor, 1999 N.C.A.G. 8 (3/5/99).

§ 147-64.13. Construction.

OPINIONS OF ATTORNEY GENERAL

Pursuant to this section, the provisions of § 147-64.7(a)(1) supersede the provisions of § 126-24 to the extent they conflict. Specifically, the Auditor's power to examine documents in the course of an authorized audit includes the power to examine confidential employee personnel files relevant to that audit without the consent of the employee or his employer. See opinion of Attorney General to The Honorable Ralph Campbell, Jr., State Auditor, 1999 N.C.A.G. 8 (3/5/99).

ARTICLE 6.

Treasurer.

§ 147-68. To receive and disburse moneys; to make reports.

(a) It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the treasury of this State; and to pay all warrants legally drawn on the Treasurer.

(b) No moneys shall be paid out of the treasury except on warrant unless there is a legislative appropriation or authority to pay the same.

(c) It shall be the responsibility of the Treasurer to determine that all warrants presented to him for payment are valid and legally drawn on the Treasurer.

(d) The Treasurer shall report to the Governor and Advisory Budget Commission annually and to the General Assembly at the beginning of each biennial session the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year.

(d1) The Treasurer shall report to the Joint Legislative Commission on Governmental Operations, to the Chairman, Appropriations Base Budget Committee and the Chairman, Appropriations Expansion Budget Committee of the House of Representatives, and to the Chairman, Committee on Appropriations and the Chairman, Committee on Base Budget of the Senate, on a quarterly basis, concerning all investments and deposits made by and through his office. The report shall include a listing of all investments with or on behalf of the State or any of its agencies or institutions and shall include the particular agency or institution, fund, rate of return, duration of the investment, and the amount of deposit on all noninterest bearing accounts. The first report is due 90 days after July 1, 1982, and shall include all investments and deposits made during the 1981-82 fiscal year and all investments made during the first quarter of the 1982-83 fiscal year; thereafter, reports shall be made on a quarterly basis including all investments and deposits made during that reporting period.

(d2) After consulting with the Select Committee on Information Technology and the Joint Legislative Commission on Governmental Operations and after consultation with and approval of the Information Resources Management Commission, the Department of State Treasurer may spend departmental receipts for the 2000-2001 fiscal year to continue improvement of the Department's investment banking operations system, retirement payroll systems, and other information technology infrastructure needs. The Department of State Treasurer shall report by January 1, 2001, and annually thereafter to the following regarding the amount and use of the departmental receipts: the Joint Legislative Commission on Governmental Operations, the Chairs of the General Government Appropriations Subcommittees of both the House of Representatives and the Senate, and the Select Committee on Information Technology.

(e) The State Treasurer shall except as provided in G.S. 143-25 be independent of any fiscal control exercise by the Director of the Budget or the Department of Administration and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the responsibilities of his office. (1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C.S., s. 7682; 1955, c. 577; 1957, c. 269, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 65; 1983, c. 913, s. 52; 2000-67, s. 24A.)

Editor's Note. — Session Laws 2000-67, s. 24A, effective July 1, 2000, was codified as subsection (d2) of this section at the direction of the Revisor of Statutes.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual

provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 147-69.1. Investments authorized for General Fund and Highway Funds assets.

Cross References. — See § 124-5.1(a), directing the application of dividends of the North Carolina Railroad Company received by the State to reduce the obligations described in Session Laws 1997-443, s. 32.30(c), as amended by Session Laws 1999-237, s. 27.11(d). See also § 124-5.1(b), regarding the cessation of accrual of interest on the remaining balance of the obligations described in Session Laws 1997-443, s. 32.20(c), as amended by Session Laws 1999-237, s. 27.11(d), effective January 1, 2000.

§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of:

(1) The Teachers' and State Employees' Retirement System,
(2) The Consolidated Judicial Retirement System,
(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(4) The General Assembly Medical and Hospital Care Plan,
(5) The Disability Salary Continuation Plan,
(6) The Firemen's and Rescue Workers' Pension Fund,
(7) The Local Governmental Employees' Retirement System,
(8) The Legislative Retirement System,
(9) The Escheat Fund,
(10) The Legislative Retirement Fund,
(11) The State Education Assistance Authority,
(12) The State Property Fire Insurance Fund,
(13) The Stock Workers' Compensation Fund,
(14) The Mutual Workers' Compensation Fund,
(15) The Public School Insurance Fund,
(16) The Liability Insurance Trust Fund,
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1,
(17a) North Carolina Veterans Home Trust Fund,
(17b) North Carolina National Guard Pension Fund,
(17c) Retiree Health Premium Reserve Account, and
(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c);
(2) General obligations of other states of the United States;
(3) General obligations of cities, counties and special districts in North Carolina;
(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or without the United States if such obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating

below the three highest by any nationally recognized rating service which rates the particular security;

(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North Carolina;

(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the three highest by any nationally recognized rating service which rates the particular securities;

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts which provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement Systems;

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, and the Legislative Retirement System (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated or otherwise created or located within or without the United States, provided:

a. That common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system;

b. That such corporation shall have paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;

c. That in applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

d. That the book value of common and preferred stocks including securities convertible into common stocks shall not exceed fifty per centum (50%) of the book value of all invested assets of the Retirement Systems; provided, further:

1. Not more than one and one-half per centum (11/2%) of the book value of such assets shall be invested in the stock of a single corporation, and provided further;
2. The total number of shares in a single corporation shall not exceed eight per centum (8%) of the issued and outstanding stock of such corporation, and provided further;
3. As used in this subdivision d. and elsewhere in this section, book value shall mean adjusted cost basis as shown on the records of the State Treasurer.

e. Up to five per cent (5%) of the limits authorized in subdivision d. may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" which has total assets of at least fifty million dollars ($50,000,000).

f. Individual, common or collective trust funds of banks or trust companies provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) Obligations and securities of The North Carolina Enterprise Corporation, of the North Carolina Economic Opportunities Fund, or of a limited partnership in which The North Carolina Enterprise Corporation or the North Carolina Economic Opportunities Fund is the only general partner, not to exceed twenty million dollars ($20,000,000) from all funds; and a limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions, not to exceed thirty million dollars ($30,000,000) from all funds. These maximum dollar amounts do not apply to or restrict the reinvestment in accordance with this subdivision of any income from these investments.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2, effective August 2, 2000.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than September 1, 2004. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

(b1) With respect to investments authorized by subsection (b)(8), the State Treasurer shall appoint an Equity Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The State Treasurer shall also appoint a Secretary of the Equity Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(c) Repealed by Session Laws 1995, c. 501, s. 2. (1979, c. 467, s. 2; 1983, c. 702, ss. 1-9; 1987, c. 446, s. 1; c. 751, s. 5; 1987 (Reg. Sess., 1988), c. 1070; 1989, c. 770, s. 54; 1989 (Reg. Sess., 1990), c. 813, s. 11; c. 848, s. 5; 1991, c. 542, s. 16; c. 636, s. 3; c. 749, s. 8; 1993 (Reg. Sess., 1994), c. 777, s. 4(i); 1995, c. 346, s. 2; c. 501, s. 2; 1997-456, s. 27; 1999-237, s. 27.16; 1999-251, s. 2; 2000-160, s. 2.)

Effect of Amendments. —

Session Laws 2000-160, s. 2, effective August 2, 2000, combined former subdivision (b)(10) with subdivision (b)(9); and in present (b)(9), inserted "of the North Carolina Economic Opportunities Fund" and "or the North Carolina Economic Opportunities Fund," added the last sentence, and made minor stylistic and wording changes.

Article 6B.

Statewide Accounts Receivable Program.

§ 147-86.20. Definitions.

Editor's Note. —

Session Laws 2000-67, s. 22.1(a)-(d), establishes a one-year Bad Debt Collection Clearinghouse Pilot, extending the limited 90-day Bad Debt Clearinghouse Proof of Concept Prototype for collection of previously determined "uncollectible" accounts, to determine the feasibility of implementing a centralized Bad Debt Collection Clearinghouse Program. The Office of State Controller is to establish a procedure by which State agencies and institutions with a material amount of accounts receivable is to report on collection of bad debts. The Pilot is to address the use of one or more private collection agencies and make provision to allow local government units to participate. The Office is to report the result of the Pilot to the General Asembly no later than May 15, 2001, along with recommendations on changes in law or procedure to better collect bad debts.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 147-86.22. Statewide accounts receivable program.

(a) Program. — The State Controller shall implement a statewide accounts receivable program. As part of this program, the State Controller shall do all of the following:

(1) Monitor the State's accounts receivable collection efforts.
(2) Coordinate information, systems, and procedures between State agencies to maximize the collection of past-due accounts receivable.
(3) Adopt policies and procedures for the management and collection of accounts receivable by State agencies.
(4) Establish procedures for writing off accounts receivable and for determining when to end efforts to collect accounts receivable after they have been written off.

(b) Electronic Payment. — Notwithstanding the provisions of G.S. 147-86.20 and G.S. 147-86.21, this subsection applies to debts owed a community college, a local school administrative unit, an area mental health, developmental disabilities, and substance abuse authority, and the Administrative Office of the Courts, and to debts payable to or through the office of a clerk of superior court or a magistrate, as well as to debts owed to other State agencies as defined in G.S. 147-86.20.

The State Controller shall establish policies that allow accounts receivable to be payable under certain conditions by electronic payment. These policies shall be established with the concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or through the office of a clerk of superior court or a magistrate shall be established with the concurrence of the Administrative Officer of the Courts. The Administrative Officer of the Courts may also establish policies otherwise authorized by law that apply to these debts as long as those policies are not inconsistent with the Controller's policies.

A condition of payment by electronic payment is receipt by the appropriate State agency of the full amount of the account receivable owed to the State agency. A debtor who pays by electronic payment may be required to pay any fee or charge associated with the use of electronic payment. Fees associated with processing electronic payments may be paid out of the General Fund and Highway Fund if the payment of the fee by the State is economically beneficial to the State and the payment of the fee by the State has been approved by the State Controller and State Treasurer.

The State Controller and State Treasurer shall consult with the Joint Legislative Commission on Governmental Operations before establishing policies that allow accounts receivable to be payable by electronic payment and before authorizing fees associated with electronic payment to be paid out of the General Fund and Highway Fund. A State agency must also consult with the Joint Legislative Commission on Governmental Operations before implementing any program to accept payment under the policies established pursuant to this subsection.

A payment of an account receivable that is made by electronic payment and is not honored by the issuer of the card or the financial institution offering electronic funds transfer does not relieve the debtor of the obligation to pay the account receivable.

(c) Collection Techniques. — The State Controller, in conjunction with the Office of the Attorney General, shall establish policies and procedures to govern techniques for collection of accounts receivable. These techniques may include use of credit reporting bureaus, judicial remedies authorized by law, and administrative setoff by a reduction of an individual's tax refund pursuant to the Setoff Debt Collection Act, Chapter 105A of the General Statutes, or a reduction of another payment, other than payroll, due from the State to a person to reduce or eliminate an account receivable that the person owes the State.

No later than January 1, 1999, the State Controller shall negotiate a contract with a third party to perform an audit and collection process of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors. The third party shall be compensated only from funds recovered as a result of the audit. Savings realized in excess of costs shall be transferred from the agency to the Office of State Budget, Planning, and Management and placed in a special reserve account for future direction by the General Assembly. Any disputed savings shall be settled by the State Controller. This paragraph does not apply to the purchase of medical services by State agencies or payments used to reimburse or otherwise pay for health care services. (1993, c. 512, s. 1; 1998-212, s. 26.1; 1999-434, s. 3; 2000-140, s. 93.1(a).)

Editor's Note. —

Session Laws 2000-67, s. 22(a)-(e), directs that during the 2000-2001 fiscal year, receipts generated by the collection of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors, as required by G.S. 147-86.22(c), are to be deposited in the Special Reserve Account 24172. For the 2000-2001 fiscal year, $550,000 of the funds transferred from the Account are to be used by the Office of the State Controller for data processing, debt collection, or e-commerce costs, and any unobligated funds realized above this allowance are subject to appropriation by the General Assembly in the 2001 Session. All funds available in the Account on July 1, 2000, are transferred to the General Fund. The State Controller is to report monthly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into the Special Reserve Account and the disbursement of that revenue.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —

Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (c).

§§ 147-86.28, 147-86.29: Reserved for future codification purposes.

ARTICLE 6C.

Health and Wellness Trust Fund.

§ 147-86.30. Health and Wellness Trust Fund established.

(a) Fund Established. — There is established the Health and Wellness Trust Fund in the Office of the State Treasurer that shall be used to develop a comprehensive plan to finance programs and initiatives to improve the health and wellness of the people of North Carolina. As used in this Article, the term "Fund" means the Health and Wellness Trust Fund. It is the intent of the General Assembly that the funds provided pursuant to this Article to address the health needs of North Carolinians be used to supplement, not supplant, existing funding of health and wellness programs.

(b) Fund Earnings, Assets, and Balances. — The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the chair of the Commission, pursuant to directives of the Commission. The Commission may expend moneys in the Fund only as provided in subsections (c) and (d) of this section.

(c) Creation of Fund Reserve. — The Commission shall reserve, and shall not expend, fifty percent (50%) of each annual payment allocated to the Health and Wellness Trust Fund pursuant to G.S. 143-16.4 during years 2001 through 2025 to create and build the Fund Reserve. During years 2001 through 2025, the Commission may expend any investment earnings on the reserved funds. Beginning in year 2026, and thereafter, the Commission shall not expend the reserved funds but may continue to expend any investment earnings on the reserved funds.

(d) Use of Nonreserved Funds. — The Commission may expend all of the annual payments for years 1998, 1999, and 2000 and may expend the remaining fifty percent (50%) portion of each annual payment thereafter through the year 2025 that is not reserved pursuant to subsection (c) of this section. Any unexpended or unencumbered portion of the nonreserved portion of each annual payment for years 2001 through 2025 that has not been expended or encumbered by the third June 30th following the date of the receipt of the payment shall be reserved pursuant to subsection (c) of this section. The Commission may expend any investment earnings on the nonreserved funds in the year in which the investment earnings are received by the Fund.

(e) Fund Purposes. — Moneys from the Fund may be used for any of the following purposes:

(1) To address the health needs of vulnerable and underserved populations in North Carolina.
(2) To fund programs and initiatives that include research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs.
(3) To develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use. The plan shall include measurable health and wellness objectives and a proposed timetable for achieving these objectives. In developing the plan, the Commission shall consider all facets of health, including prevention, education, treatment, research, and related areas.

(f) Limit on Operating and Administrative Expenses. — No more than two and one-half percent (2 1/2%) of the annual receipts of the Fund for the fiscal year beginning July 1 or a total sum of one million dollars ($1,000,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Commission and its staff. All administrative expenses of the Commission shall be paid from the Fund. (2000-147, s. 2.)

Cross References. — As to the Tobacco Trust Fund, see § 143-715 et seq.

Editor's Note. — Session Laws 2000-147, s. 9, made this Article effective August 2, 2000.

Session Laws 2000-147, s. 8(a)-(c), provides: "(a) Interpretation of Act.--The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

"(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

"(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-147, s. 8(d), contains a severability clause.

§ 147-86.31. Health and Wellness Trust Fund; eligibility for grants; annual reports from non-State agencies.

(a) Eligible Grant Applicants. — Any of the following are eligible to apply for a grant from the Fund:

(1) A State agency.
(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation which has as a significant purpose promoting the public's health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use.

(b) Annual Report From Non-State Agencies. — Grant or financial assistance recipients that are non-State agencies shall submit an annual report to the Commission. The report shall include information concerning how the funds are used, the intended goals and objectives of the recipient's grant proposal or program initiative, and the results of an evaluation of the extent to which the outcomes of the initiatives or proposal achieved those goals and objectives. (2000-147, s. 2.)

§ 147-86.32. Health and Wellness Trust Fund; Commission established; membership qualifications; vacancies.

(a) Commission Established. — There is established the Health and Wellness Trust Fund Commission. As used in this Article, the term "Commission" means the Health and Wellness Trust Fund Commission. The Commission shall exercise its powers independently, but for administrative purposes, the Commission shall be located within the Office of the State Treasurer.

(b) Membership. — The Commission shall consist of 18 members. The members shall not be employed by or be agents of tobacco product manufacturing companies. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. These members shall be appointed as follows:

(1) The Governor shall make the following appointments:
  a. A person involved in public health.
  b. A person involved in the operation of health care delivery systems.
  c. A health care practitioner.
  d. An at-large appointee.
  e. An at-large appointee.
  f. An at-large appointee.

(2) The President Pro Tempore of the Senate shall make the following appointments:
  a. A person involved in health research.
  b. A person involved in tobacco-related health care issues.
  c. A person involved in health promotion and disease prevention.
  d. An at-large appointee.
  e. An at-large appointee.
  f. An at-large appointee.

(3) The Speaker of the House of Representatives shall make the following appointments:
  a. A person involved in health policy trends.
  b. A person involved with health care for underserved populations.
  c. A person involved with child health care.
  d. An at-large appointee.
  e. An at-large appointee.
  f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State.

(c) Initial Appointments; Term Limits; Officers. — To provide for a staggered membership, the members initially appointed pursuant to sub-subdivisions (b)(1)a., (1)b., (2)d., and (3)d. of this section shall serve one-year terms ending on June 30, 2001. The members initially appointed pursuant to sub-subdivisions (b)(2)c., (2)e., (3)a., and (3)e. shall serve two-year terms ending on June 30, 2002. The members initially appointed pursuant to sub-subdivisions (b)(1)c., (1)d., (1)e., (2)b., and (3)c. shall serve three-year terms ending June 30, 2003. The remaining members initially appointed pursuant to subsection (b) of this section shall serve four-year terms ending June 30, 2004.

Except as provided for the initial members under this subsection, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. A member may be removed from the Commission for cause by the authority that appointed the member.

The Commission shall elect from its membership a chair, vice-chair, and other officers as necessary for two-year terms beginning July 1 at the first meeting of the Commission held on or after July 1 of every even-numbered year. The vice-chair may act for the chair in the absence of the chair as authorized by the Commission.

(d) Vacancies. — Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term.

(e) Frequency of Meetings. — The Commission shall meet at least twice each year and may hold special meetings at the call of the chair or a majority of the voting members. The Governor shall call the initial meeting of the Commission.

(f) Quorum; Majority. — Ten members shall constitute a quorum of the Commission. The Commission may act upon a majority vote of all the members of the Commission on matters involving the disbursement of funds and personnel matters properly before the Commission. On all other matters, the Commission may act by majority vote of the members of the Commission at a meeting at which a quorum is present.

(g) Meeting Facilities. — The Office of the State Treasurer shall provide meeting facilities for the Commission and its staff as requested by the chair of the Commission.

(h) Per Diem and Expenses. — The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members shall be paid from the Fund.

(i) Conflict of Interest. — The members of the Commission shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest. In addition to the restrictions imposed under G.S. 14-234, a member shall not vote on, participate in the deliberations of, or otherwise attempt through his or her official capacity to influence the vote on a grant or other financial assistance award by the Commission to a nonprofit entity of which the member is an officer, director, or employee or to a governmental entity of which the member is an employee or a member of the governing board. A violation of this subsection is a Class 1 misdemeanor. (2000-147, s. 2.)

§ 147-86.33. Health and Wellness Trust Fund; powers and duties.

(a) The Commission shall do the following:

(1) Allocate moneys from the Fund as grants. A grant may be awarded only for a program or initiative that satisfies the criteria and furthers the purposes of this Article, but the provisions of this Article shall be liberally construed. The Commission shall strive to avoid imposing any unnecessary barriers in the grant application process.

(2) Develop criteria for awarding grants under this Article. The criteria shall include types of programs and initiatives to be funded, including

programs which address the short-and long-term health and wellness of the citizens of North Carolina.

(3) Develop criteria by which to measure the outcomes of funded programs to evaluate the extent to which those programs achieved the goals for which funds were awarded.

(4) Develop a mechanism with which to evaluate individual applications.

(5) Ensure that good faith efforts are made to achieve federal mandates targeting the reduction of youth access to tobacco products.

(6) Administer the provisions of this Article.

(7) Adopt rules to implement this Article.

(b) The Commission is authorized to hire staff or contract for other expertise for the administration of the Fund.

(c) Gifts and Grants. — The Commission is authorized to accept gifts or grants from other sources. (2000-147, s. 2.)

§ 147-86.34. Advisory Council.

The Commission shall create an Advisory Council to advise it with regard to issues as requested by the Commission. The Advisory Council shall include the Secretary of the Department of Health and Human Services, the State Health Director, the Dean of the School of Public Health of the University of North Carolina, and others the Commission considers necessary. (2000-147, s. 2.)

§ 147-86.35. Health and Wellness Trust Fund; reporting requirements.

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and to the chairs of the Joint Legislative Health Care Oversight Committee regarding implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Commission on Governmental Operations. The annual report shall also include a summary of each recipient's annual report submitted to the Health and Wellness Trust Fund Commission pursuant to G.S. 147-86.31(b) and an analysis of progress toward the goals and objectives of any comprehensive, community-based plan established pursuant to G.S. 147-86.30(e)(3). A written copy of the annual report shall also be sent to the Legislative Library by November 1 each year. Written reports shall also be sent on a quarterly basis to the Joint Legislative Commission on Governmental Operations.

(b) Any non-State corporation, organization, or institution that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143-6.1. (2000-147, s. 2.)

§ 147-86.36. Health and Wellness Trust Fund; open meeting and public records requirements.

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Fund and the Commission, and the Fund and the Commission shall be subject to audit by the State Auditor as provided by law. The Commission shall reimburse the State Auditor for the actual cost of the audit. (2000-147, s. 2.)

Chapter 148.

State Prison System.

Article 3.

Labor of Prisoners.

Article 4.

Paroles.

Article 3.

Labor of Prisoners.

§ 148-29. Transportation of convicts to prison; reimbursement to counties; sheriff's expense affidavit.

Editor's Note. —
Session Laws 1999-237, s. 18.10(a), as amended by Session Laws 2000-67, s. 16.2, provides that the Department of Correction may use funds appropriated to the Department for the 1999-2000 and 2000-2001 fiscal years to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates and parolees and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 148-33.2. Restitution by prisoners with work-release privileges.

CASE NOTES

Restitution Cannot Be Imposed with Active Prison Sentence. — When a court imposes an active sentence, it may recommend restitution as a condition of work-release, as a condition of post-release supervision and parole, or as a condition of probation, but it may not require the defendant to make restitution while serving an active sentence. State v. Hughes, 136 N.C. App. 92, 524 S.E.2d 63 (1999).

§ 148-37. Additional facilities authorized; contractual arrangements.

Cross References. — For prohibition on private prisons housing out-of-state inmates, see § 148-37.1.

Editor's Note. —
Session Laws 1997-443, s. 19.17, as amended by Session Laws 1998-212, s. 17.23, Session Laws 1999-237, s. 18.19, and Session Laws 2000-67, s. 16.3(b), provides that the Department of Correction, in consultation with the United States Corrections Corporation, shall determine the feasibility of expanding private confinement facilities and shall report its find-

ings to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections and Crime Control Oversight Committee by December 1, 1997; and that the Department shall establish proposed standards for private correctional facilities used to confine inmates from a jurisdiction other than North Carolina, or a political subdivision thereof, or the federal government and shall provide a final report on those proposed standards by March 15, 2000, with a progress report to the Joint Legislative Corrections and Crime Control Oversight Committee by November 1, 1999. The Department shall also consult with the Department of Justice on the penalty provided for in G.S. 14-256.1 and on the implications of convicting inmates already serving sentences imposed by other jurisdictions in private prisons in North Carolina.

Session Laws 2000-67, s. 16.3(b) repealed Session Laws 1997-443, s. 19.17(c), as amended, which had provided that no municipality, county, or private entity could construct or operate a facility for confinement of inmates from any jurisdiction other than North Carolina, a political subdivision thereof, or the federal government until the General Assembly had acted upon the proposed standards, and that no private confinement facility that received payment from the State for the housing of State prisoners could contain inmates from any jurisdiction other than North Carolina or a political subdivision thereof without the written consent of the Secretary of Correction.

§ 148-37.1. Prohibition on private prisons housing out-of-state inmates.

(a) Except as otherwise provided in this section or authorized by North Carolina law, no municipality, county, or private entity may authorize, construct, own, or operate any type of correctional facility for the confinement of inmates serving sentences for violation of the laws of a jurisdiction other than North Carolina.

(b) The provisions of this section shall not apply to facilities owned or operated by the federal government and used exclusively for the confinement of inmates serving sentences for violation of federal law, but only to the extent that such facilities are not subject to restriction by the states under the provisions of the United States Constitution. (2000-67, s. 16.3(a).)

Editor's Note. — Session Laws 2000-67, s. 16.3(c), made this section effective June 30, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

ARTICLE 4.

Paroles.

§ 148-57.1. Restitution as a condition of parole or post-release supervision.

CASE NOTES

Restitution Cannot Be Imposed with Active Prison Sentence. — When a court imposes an active sentence, it may recommend restitution as a condition of work-release, as a condition of post-release supervision and parole, or as a condition of probation, but it may not require the defendant to make restitution while serving an active sentence. State v. Hughes, 136 N.C. App. 92, 524 S.E.2d 63 (1999).

§ 148-62.1. (Effective July 1, 2001) Entitlement of indigent parolee and post-release supervisee to counsel, in discretion of Post-Release Supervision and Parole Commission.

Any parolee or post-release supervisee who is an indigent under the terms of G.S. 7A-450(a) may be determined entitled, in the discretion of the Post-Release Supervision and Parole Commission, to the services of counsel at State expense at a parole revocation hearing at which either:

(1) The parolee or post-release supervisee claims not to have committed the alleged violation of the parole or post-release supervision conditions; or

(2) The parolee or post-release supervisee claims there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, even if the violation is a matter of public record or is uncontested, and that the reasons are complex or otherwise difficult to develop or present; or

(3) The parolee or post-release supervisee is incapable of speaking effectively for himself;

and where the Commission feels, on a case by case basis, that such appointment in accordance with either (1), (2) or (3) above is necessary for fundamental fairness.

If the parolee or post-release supervisee is determined to be indigent and entitled to services of counsel, counsel shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services. (1973, c. 1116, s. 2; 1993, c. 538, s. 52; 1994, Ex. Sess., c. 24, s. 14(b); 2000-144, s. 45.)

For this section as in effect until July 1, 2001, see the main volume.

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B, § 7A-498 et seq.

Effect of Amendments. — Session Laws 2000-144, s. 45, effective July 1, 2001, added the last paragraph.

Chapter 150B.

Administrative Procedure Act.

Article 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. — This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. — This Chapter confers procedural rights.

(c) Full Exemptions. — This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.
(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
(3) The Utilities Commission.
(4) The Industrial Commission.
(5) The Employment Security Commission.

(d) Exemptions from Rule Making. — Article 2A of this Chapter does not apply to the following:

(1) The Commission.
(2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.
(3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.
(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.
(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.
(7) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in administering the provisions of Parts 2 and 3 of Article 3 of Chapter 135 of the General Statutes.

(e) Exemptions From Contested Case Provisions. — The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:
(1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).
(2) Repealed by Session Laws 1993, c. 501, s. 29.
(3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.
(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.
(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.
(6) The Department of Revenue.
(7) The Department of Correction.
(8) The Department of Transportation, except as provided in G.S. 136-29.
(9) The Occupational Safety and Health Review Board.
(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
(11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7.

(f) **(Effective until July 1, 2001)** Exemption for The University of North Carolina. — Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina.

(f) **(Effective July 1, 2001)** Exemption from All But Judicial Review. — No Article in this Chapter except Article 4 applies to The University of North Carolina. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147, s. 2; c. 927, s. 13; 1985, c. 746, ss. 1, 19; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44); 1989 (Reg. Sess., 1990), c. 1004, s. 36; 1991, c. 103, s. 1; c. 418, s. 2; c. 477, s. 1; c. 749, ss. 9, 10; 1991 (Reg. Sess., 1992), c. 1030, s. 46; 1993, c. 501, s. 29; 1993 (Reg. Sess., 1994), c. 777, ss. 4(j), 4(k); 1995, c. 249, s. 4; c. 507, s. 27.8(m); 1997-35, s. 2; 1997-278, s. 1; 1997-412, s. 8; 1997-443, ss. 11A.110, 11A.119(a); 2000-189, s. 14.)

Subsection (f) Set Out Twice — The first version of subsection (f) set out above is effective until July 1, 2001. The second version of subsection (f) is effective July 1, 2001.

Effect of Amendments. —
Session Laws 2000-189, s. 14, effective July 1, 2000, repealed subdivision (d)(2), which had exempted the North Carolina Low-Level Radioactive Waste Management Authority from the rule making provisions of Article 2A of the Chapter when administering §§ 104G-10 and 104G-11.

CASE NOTES

Department of Insurance. — Insurance Commissioner's promulgation of 11 N.C.A.C. 12.0319, prohibiting subrogation provisions in life or accident and health insurance contracts, supported by §§ 58-2-40 (right to limit practices injurious to the public) and 58-50-15(a) (prohibiting provisions less favorable to the insured), did not exceed his statutory authority, even though it may change state substantive law, and did not amount to an unconstitutional delegation of legislative powers, because statutory provisions (§§ 58-2-40, 58-51-15, and 58-50-15) and judicial review (available under this chapter) offer adequate procedural safeguards and support the delegation of power to the Commissioner. In re 11 N.C.A.C 12.0319, 134 N.C. App. 22, 517 S.E.2d 134 (1999), cert. denied, appeal dismissed, 351 N.C. 105, — S.E.2d — (1999).

Challenges to Constitutionality of Regulation or Statute. — Under North Carolina law, plaintiffs may be able to bypass administrative review and seek direct relief from the court. For example, when an aggrieved party challenges the constitutionality of a regulation or statute, administrative remedies are deemed to be inadequate and exhaustion thereof is not required. Prentiss v. Allstate Ins. Co., 87 F. Supp. 2d 514 (W.D.N.C. 1999).

Applied in Johnston Health Care Ctr., L.L.C. v. North Carolina Dep't of Human Resources, — N.C. App. —, 524 S.E.2d 352, 2000 N.C. App. LEXIS 20 (2000).

Quoted in Prentiss v. Allstate Ins. Co., 87 F. Supp. 2d 514 (W.D.N.C. 1999).

Stated in Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

Cited in CM ex rel. JM v. Board of Educ., 85 F. Supp. 2d 574 (W.D.N.C. 1999); Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

§ 150B-2. Definitions.

CASE NOTES

Applied in Duke Univ. Medical Ctr. v. Bruton, 134 N.C. App. 39, 516 S.E.2d 633 (1999).

OPINIONS OF ATTORNEY GENERAL

The signing of a proposed memorandum of understanding with federal land managers of National Parks and Wilderness Areas in and around North Carolina would not constitute rulemaking under the N.C. Administrative Procedures Act and, therefore, did not require rulemaking by the Environmental Management Commission. See Opinion of Attorney General to Mr. William R. Gilkeson, Staff Attorney, N.C. General Assembly, 1998 N.C.A.G. 54 (12/4/98).

Article 2A.

Rules.

Part 1. General Provisions.

§ 150B-18. Scope and effect.

CASE NOTES

Rule denying Medicaid payments to those who are eligible for Medicare, but have failed to enroll, would be struck down as unsupported by statutory or regulatory authority and as denying a substantial right. Duke Univ. Medical Ctr. v. Bruton, 134 N.C. App. 39, 516 S.E.2d 633 (1999).

§ 150B-21. Agency must designate rule-making coordinator; duties of coordinator.

(a) Each agency must designate one or more rule-making coordinators to oversee the agency's rule-making functions. The coordinator shall serve as the liaison between the agency, other agencies, units of local government, and the public in the rule-making process. The coordinator shall report directly to the agency head.

(b) The rule-making coordinator shall be responsible for the following:

(1) Preparing notices of public hearings.

(2) Coordinating access to the agency's rules.

(3) Screening all proposed rule actions prior to publication in the North Carolina Register to assure that an accurate fiscal note has been completed as required by G.S. 150B-21.4(b).

(4) Consulting with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities to determine which local governments would be affected by any proposed rule action.

(5) Providing the North Carolina Association of County Commissioners and the North Carolina League of Municipalities with copies of all fiscal notes required by G.S. 150B-21.4(b), prior to publication in the North Carolina Register of the proposed text of a permanent rule change.

(6) Coordinating the submission of proposed rules to the Governor as provided by G.S. 150B-21.26.

(c) At the earliest point in the rule-making process and in consultation with the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and with samples of county managers or city managers, as appropriate, the rule-making coordinator shall lead the agency's efforts in the development and drafting of any rules or rule changes that could:

(1) Require any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) Increase the cost of providing or delivering a public service funded in whole or in part by any unit of local government; or

(3) Otherwise affect the expenditures or revenues of a unit of local government.

(d) The rule-making coordinator shall send to the Office of State Budget, Planning, and Management for compilation a copy of each final fiscal note prepared pursuant to G.S. 150B-21.4(b).

(e) The rule-making coordinator shall compile a schedule of the administrative rules and amendments expected to be proposed during the next fiscal year. The coordinator shall provide a copy of the schedule to the Office of State Budget, Planning, and Management in a manner proposed by that Office.

(f) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the rule-making coordinator shall:

(1) Attach to the proposed rule a certificate prepared by the rule-making coordinator identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons for why the proposed rule is required by law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the proposed rule; and

(2) The rule-making coordinator shall maintain a copy of the federal law and shall provide to the Office of State Budget, Planning, and Management for compilation the citation to the federal law requiring or pertaining to the proposed rule. (1991, c. 418, s. 1; 1995, c. 415, s. 1; c. 507, s. 27.8(v); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" throughout the section.

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. — An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) The effective date of a recent act of the General Assembly or the United States Congress.
(3) A recent change in federal or State budgetary policy.
(4) A federal regulation.
(5) A court order.
(6) The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

(a1) Notwithstanding the provisions of subsection (a) of this section, the Wildlife Resources Commission may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical to protect the public health, safety, or welfare, conserve wildlife resources, or provide for the orderly and efficient operation of game lands by establishing any of the following:

(1) No wake zones;
(2) Hunting or fishing seasons;
(3) Hunting or fishing bag limits;

(4) Management of public game lands as defined in G.S. 113-129(8a).

When the Wildlife Resources Commission adopts a temporary rule pursuant to this subsection, it must submit the reference to this subsection as its statement of need to the Codifier of Rules.

(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;
(2) Accept oral and written comments on the proposed temporary rule; and
(3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifer of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection.

(a3) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Insurance may adopt a temporary rule to implement the provisions of G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing. When the Commissioner adopts a temporary rule pursuant to this subsection, the Commissioner must submit the reference to this subsection as the Commissioner's statement of need to the Codifier of Rules.

(a4) Notwithstanding the provisions of subsection (a) of this section, the Secretary of Commerce may adopt temporary rules to implement the information technology procurement provisions of Part 16 of Article 10 of Chapter 143B of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;
(2) Accept oral and written comments on the proposed temporary rule; and
(3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifer of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection.

(a5) Notwithstanding the provisions of subsection (a) of this section, the State Board of Elections may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

(1) In accordance with the provisions of G.S. 163-22.2.
(2) To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
(3) The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

When the State Board of Elections adopts a temporary rule pursuant to this subsection, it must submit the reference to this subsection as its statement of need to the Codifier of Rules.

(a6) Reserved for future codification purposes.

(a7) Notwithstanding the provisions of subdivision (a)(2) of this section, an agency may adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

(1) **(Repealed effective July 1, 2002)** The North Carolina Rural Redevelopment Authority Act, Part 2D of Article 10 of Chapter 143B of the General Statutes.

(2) **(Repealed effective July 1, 2003)** Article 34B of Chapter 115C of the General Statutes, relating to qualified zone academy bonds.

(b) Review. — When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a) or (a1) of this section. In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a) or (a1) of this section, the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision.

(c) Standing. — A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) or (a1) of this section and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court shall not grant an ex parte temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. — A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.

(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.

(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. — When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. Publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings for a permanent rule if the permanent rule is substantially the same as the published temporary rule, unless the agency published a notice of rule-making proceedings at least 60 days before it adopted the temporary rule. (1973, c. 1331, s. 1; 1981, c. 688, s. 12; 1981 (Reg. Sess., 1982), c. 1232, s. 1; 1983, c. 857; c. 927, ss. 4, 8; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(8); 1987, c. 285, ss. 10-12; 1991, c. 418, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 149; 1993, c. 553, s. 54; 1995, c. 507, s. 27.8(c); 1996, 2nd Ex. Sess., c. 18, ss. 7.10(c), (d); 1997-403, ss. 1-3; 1998-127, s. 2; 1998-212, s. 26B(h); 1999-434, s. 16; 1999-453, s. 5(a); 2000-69, ss. 3, 5; 2000-148, ss. 4, 5.)

Editor's Note. —

Session Laws 1999-463, s. 4 authorizes every State agency to adopt temporary rules necessary to implement the provisions of the act, the Hurricane Floyd Recovery Act of 1999, and provides that notwithstanding § 150B-21.1 (a)(2) and 26 NCAC 2C.0102(11), the authority to adopt temporary rules to implement the provisions of the act shall continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules. Notwithstanding § 150B-21.1 (d), a temporary rule adopted to implement the provisions of the act shall specify the date on which the rule will expire and shall continue in effect until that date. Any agency that adopts a temporary rule to implement the provisions of the act shall report the text of the rule and the agency's written statement of its findings of the need for the rule to the Joint Legislative Administrative Procedure Oversight Committee within 30 days of the adoption of the temporary rule. Section 4 applies to the adoption of temporary rules by the Department of Administration under § 113A-11 (a) and to the adoption of temporary rules that establish minimum criteria by any State agency, as defined in § 113A-9, under § 113A-11 (b).

Session Laws 2000-50, s. 2, provides: "Notwithstanding G.S. 150B-21.1(a), the Medical Care Commission shall adopt temporary rules for the purpose of defining the circumstances under which adult care homes may admit residents on a short-term basis for the purpose of caregiver respite and the rules that shall apply during the course of their stay. The Commission's authority to adopt temporary rules under this section expires on the date that permanent rules pertaining to the same subject matter adopted by the Commission as authorized under G.S. 143B-165(10) become effective."

Session Laws 2000-55, s. 6, provides: "Notwithstanding G.S. 150B-21.1(a), the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt temporary rules to implement G.S. 122C-26(5)."

Session Laws 2000-67, s. 21.5, provides that, notwithstanding the provisions of G.S. 150B-21.1(a), the Department of Administration may adopt temporary rules to approve abuser treatment programs that apply to the North Carolina Council for Women.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2000-69, s. 4, in part, provides: "Interpretation of Act.

"(a) Additional Method. This act provides an additional and alternative method for the doing of the things it authorizes and is as supplemental and additional to powers conferred by other laws. Except as otherwise expressly provided, it does not derogate any powers now existing.

"(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly.

"(c) Liberal Construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-69, s. 4(d) contains a severability clause.

Session Laws 2000-134, s. 21, provides that Session Laws 2000-134, relating to air quality emission inspections, and fund expenditures, constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that, notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Environmental Management Commission and the Division of Motor Vehicles of the Department of Transportation may adopt temporary rules to implement the provisions of the act. Section 21 is to continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules.

Session Laws 2000-69, s. 5, provides that subdivision (a7)(2), as enacted by s. 3 of the act, is repealed effective July 1, 2003.

Session Laws 2000-148, s. 5, provides that subdivision (a7)(1), as enacted by s. 4 of the act, is repealed effective July 1, 2002.

Effect of Amendments. —

Session Laws 2000-69, s. 3, effective June 30, 2000, added subsection (a7). See editor's note for repeal of subdivision (a7)(2).

Session Laws 2000-148, s. 4, effective July 1, 2000, added present subdivision (a7)(1), and in subdivision (a7)(2), added "relating to qualified zone academy bonds." See editors's note for repeal of subdivision (a7)(1).

§ 150B-21.3. Effective date of rules.

Editor's Note. —

Session Laws 2000-172, s. 2.2, as amended by Session Laws 2000-140, s. 92.1(b), provides that notwithstanding G.S. 150B-21.3(a) and 25 NCAC 2C.0102(11), the Coastal Resources Commission shall adopt a temporary rule to establish use standards for waterfront development in urban areas to replace G.S. 113A-120.2 when it expires. The temporary rule shall become effective April 1, 2000, and shall remain in effect until a permanent rule that replaces the temporary rule becomes effective.

Session Laws 2000-142, s. 3, provides that, notwithstanding G.S. 150B-21.3(a) and 26 NCAC 2C.0102(11), the Coastal Resources Commission may adopt a temporary rule to establish criteria for exceptions to the regulatory requirement, effective August 1, 2000, of a 30-foot development setback along public trust and estuarine waters to allow construction of residences on previously platted undeveloped lots of 5,000 square feet or less that are located in intensively developed areas and that would otherwise be prohibited under rules adopted by the Commission pursuant to Article 7 of Chapter 113A of the General Statutes. The temporary rule shall become effective upon its adoption by the Commission and shall remain in effect until a permanent rule that replaces the temporary rule becomes effective.

§ 150B-21.4. Fiscal notes on rules.

(a) State Funds. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(b) Local Funds. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of the Governor as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the Office of State Budget, Planning, and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a fiscal note for the proposed rule change from the Office of State Budget, Planning, and Management or prepare a fiscal note for the proposed rule change and have the note approved by that Office. If an agency requests the Office of State Budget, Planning, and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget, Planning, and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change may prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget, Planning, and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget, Planning, and Management for review. The Office of State Budget, Planning, and Management must review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency may ask the Office of State Budget, Planning, and Management to determine whether the proposed rule change has a substantial economic impact.

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least five million dollars ($5,000,000) in a 12-month period.

(b2) Content. — A fiscal note required by subsection (b1) of this section must contain the following:

(1) A description of the persons who would be affected by the proposed rule change.
(2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.
(3) A description of the purpose and benefits of the proposed rule change.
(4) An explanation of how the estimate of expenditures was computed.

(c) Errors. — An erroneous fiscal note prepared in good faith does not affect the validity of a rule. (1973, c. 1331, s. 1; 1979, 2nd Sess., c. 1137, s. 41.1; 1983, c. 761, s. 185; 1985, c. 746, s. 1; 1987, c. 827, s. 54; 1991, c. 418, s. 1; 1995, c. 415, s. 2; c. 507, s. 27.8(b); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" throughout the section.

Part 3. Review by Commission.

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. — The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly, when considered in light of the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed and the legislative intent of the General Assembly in delegating the duty.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 of this Article. The Commission may ask the Office of State Budget, Planning, and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget, Planning, and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 of this Article and must return the rule to the agency. Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. — The Commission must review a rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (a).

Part 5. Rules Affecting Local Governments.

§ 150B-21.28. Role of the Office of State Budget, Planning, and Management.

The Office of State Budget, Planning, and Management shall:

(1) Compile an annual summary of the projected fiscal impact on units of local government of State administrative rules adopted during the preceding fiscal year.

(2) Compile from information provided by each agency schedules of anticipated rule actions for the upcoming fiscal year.

(3) Provide the Governor, the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities with a copy of the annual summary and schedules by no later than March 1 of each year. (1995, c. 415, s. 3; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in the catchline and in the introductory language.

Article 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

CASE NOTES

Quoted in Prentiss v. Allstate Ins. Co., 87 F. Supp. 2d 514 (W.D.N.C. 1999).

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

CASE NOTES

Construction with Other Laws. — It was within the ALJ's discretion to dismiss the petition as untimely under the North Carolina Administrative Procedures Act (APA), because although the Individuals with Disabilities Education Act (IDEA) instructs states to make a free appropriate public education (FAPE) available, it has left to the states the procedural mechanisms for putting the same in place, and application of the APA's 60-day limitation was not inconsistent with the underlying policies of the IDEA. M.E. v. Board of Educ., 88 F. Supp. 2d 493 (W.D.N.C. 1999).

Quoted in Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 286, 517 S.E.2d 401 (1999).

Cited in Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

§ 150B-29. Rules of evidence.

(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a decision, by the agency in making a final decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 7; 1991, c. 35, s. 4; 2000-190, s. 4.)

Effect of Amendments. — Session Laws 2000-190, s. 4, effective January 1, 2001, and applicable to contested cases commenced on or after that date, in subsection (a), inserted the next-to-last sentence and deleted "recommended" following "in making a" in the last sentence.

CASE NOTES

School Board's Dismissal of At-Will Employee Upheld. — It was not arbitrary or capricious, nor an abuse of discretion, for school board to terminate an at-will employee for making a racial comment in a school setting. Cooper v. Board of Educ., 135 N.C. App. 200, 519 S.E.2d 536 (1999).

Cited in Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000); Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

§ 150B-33. Powers of administrative law judge.

(a) An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) An administrative law judge may:

(1) Administer oaths and affirmations;

(2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and G.S. 1A-1, Rule 45;

(3) Provide for the taking of testimony by deposition and rule on all objections to discovery in accordance with G.S. 1A-1, the Rules of Civil Procedure;

(3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure;

(4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;

(6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;

(7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and

(8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court.

(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.

(10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules.

(11) Order the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved in contested cases decided

under Chapter 126 where the administrative law judge finds discrimination, harassment, or orders reinstatement or back pay. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 5, 9, 10, 26; 1987 (Reg. Sess., 1988), c. 1111, ss. 18, 19; 1991, c. 35, s. 5; 2000-190, s. 5.)

Effect of Amendments. — Session Laws 2000-190, s. 5, effective January 1, 2001, and applicable to contested cases commenced on or after that date, added subdivision (b)(11).

§ 150B-34. Decision of administrative law judge.

(a) Except as provided in G.S. 150B-36(c), and subsection (c) of this section, in each contested case the administrative law judge shall make a decision that contains findings of fact and conclusions of law and return the decision to the agency for a final decision in accordance with G.S. 150B-36. The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(c).

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.

(d) Except for the exemptions contained in G.S. 150B-1(c) and (e), and subsection (c) of this section, the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 5, 23; 1987 (Reg. Sess., 1988), c. 1111, s. 21; 1991, c. 35, s. 6; 2000-190, s. 6.)

Effect of Amendments. — Session Laws 2000-190, s. 6, effective January 1, 2001, and applicable to contested cases commenced on or after that date, substituted "Decision" for "Recommended decision or order" in the catchline; in subsection (a), inserted "and subsection (c) of this section," substituted "decision that contains" for "recommended decision or order that contains," added "and return the decision to the agency for a final decision in accordance with G.S. 150B-36" and added the last two sentences; and added subsections (c) and (d).

§ 150B-36. Final decision.

(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision made by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the case, and the determination is subject to judicial review at the conclusion of the case.

(b) Except as provided in G.S. 150B-34(c) or subsection (d) of this section, a final decision in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The agency shall adopt each finding of fact contained in the administrative law judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the administrative law judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency and each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall follow the procedures set forth in subsections (b1) and (b2) of this section.

(b1) For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the following:

(1) The reasons for not adopting the findings of fact.
(2) The evidence in the record relied upon by the agency in not adopting the finding of fact contained in the administrative law judge's decision.

Any finding of fact not specifically rejected as required by this subsection shall be deemed accepted for purposes of judicial review of the final decision pursuant to Article 4 of this Chapter.

(b2) For each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact. Any new finding of fact made by the agency shall be supported by a preponderance of the admissible evidence in the record. The agency shall not make any new finding of fact that is inconsistent with a finding of fact contained in the administrative law judge's decision unless the finding of fact in the administrative law judge's decision is not adopted as required by subsection (b1) of this section.

(b3) Except as provided in G.S. 150B-34(c), the agency shall adopt the decision of the administrative law judge unless the agency demonstrates that the decision of the administrative law judge is clearly contrary to the preponderance of the admissible evidence in the record. If the agency does not adopt the administrative law judge's decision as its final decision, the agency shall set forth its reasoning for the final decision in light of the findings of fact and conclusions of law in the final decision, including any exercise of discretion by the agency. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision. A copy of the decision shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions appealable directly to superior court under Article 4 of this Chapter:

(1) A determination that the Office of Administrative Hearings lacks jurisdiction.
(2) An order entered pursuant to the authority in G.S. 7A-759(e).
(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.
(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

(d) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (b) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c) or Rule 56. For any decision by the administrative law judge granting judgment on the pleadings or summary judgment that disposes of all issues in the contested case, the agency shall make a final decision. If the agency does not adopt the administrative law judge's decision, it shall set forth the basis for failing to adopt the decision and shall remand the case to the administrative law judge for hearing. The party aggrieved by the agency's decision shall be entitled to immediate judicial review of the decision under Article 4 of this Chapter. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 67; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(16); 1987, c. 878, ss. 12, 24; 1987 (Reg. Sess., 1988), c. 1111, s. 20; 1991, c. 35, s. 7; 2000-190, s. 7.)

Effect of Amendments. — Session Laws 2000-190, s. 7, effective January 1, 2001, and applicable to contested cases commenced on or after that date, substituted "decision made" for "decision recommended" in subsection (a); divided the text of former subsection (b) into present subsections (b) and (b3); in subsection (b), substituted "Except as provided in G.S. 150B-34(c) or subsection (d) of this section, a final decision" for "A final decision" and added the last two sentences; added subsections (b1) and (b2); inserted the subsection (b3) designation, and rewrote subsection (b3); added "appealable directly to superior court under Article 4 of this Chapter" in subsection (c); and added subsection (d).

CASE NOTES

Recusal From Decision Review. — Failure of the Director of the Division of Facility Services of DHHS to recuse herself from reviewing her own decision did not amount to a violation of the applicant's competitor's due process rights. Bio-Medical Applications of N.C., Inc. v. North Carolina Dep't of Human Resources, 136 N.C. App. 103, 523 S.E.2d 677 (1999).

Quoted in Hearne v. Sherman, 350 N.C. 612, 516 S.E.2d 864 (1999).

§ 150B-37. Official record.

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
(5) Repealed by Session Laws 1987, c. 878, s. 25.
(6) The administrative law judge's decision, or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the administrative law judge's decision to each party. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 13, 25; 2000-190, s. 8.)

Effect of Amendments. — Session Laws 2000-190, s. 8, effective January 1, 2001, and applicable to contested cases commenced on or after that date, deleted "recommended" following "law judge's" in subdivision (a)(6); and substituted "administrative law judge's" for "recommended" in subsection (c).

CASE NOTES

Quoted in Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

Article 4.

Judicial Review.

§ 150B-43. Right to judicial review.

Editor's Note. — Session Laws 2000-67, ss. 24(a) and (b), establishes a reserve in the Office of State Budget and Management (now the Office of State Budget, Planning, and Management), consisting of appropriations from the General Assembly and funds received from any State agency in accordance with s. 24. When a State agency files a petition for judicial review of a final decison of the Rules Review Commission under Article 4 of Chapter 150B and the Rules Review Commission prevails in that action, that State agency is to deposit to the reserve a sum equal to the Commission's actual attorneys' fees.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

CASE NOTES

I. GENERAL CONSIDERATION.

Stated in Prentiss v. Allstate Ins. Co., 87 F. Supp. 2d 514 (W.D.N.C. 1999).

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(17); 1987, c. 878, ss. 5, 27; 1991, c. 35, s. 9; 2000-190, s. 9.)

Effect of Amendments. — Session Laws 2000-190, s. 9, effective January 1, 2001, and applicable to contested cases commenced on or after that date, substituted "60 days" for "90 days" five times; deleted "recommended" following "administrative law judge's" in the next to last sentence; and substituted "120 days" for "180 days" in the last sentence.

§ 150B-49. New evidence.

An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a decision of the administrative law judge or final decision shall be made part of the official record. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 17; 2000-190, s. 10.)

Effect of Amendments. — Session Laws 2000-190, s. 10, effective January 1, 2001, and applicable to contested cases commenced on or after that date, deleted "recommended" preceding "decision" three times and substituted "decision of the administrative law judge" for "recommended decision" in the last sentence.

§ 150B-51. Scope and standard of review.

(a) In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations. First, the court shall determine whether the applicable appointing authority heard new evidence after receiving the recommended decision. If the court determines that the applicable appointing authority heard new evidence, the court shall reverse the decision or remand the case to the applicable appointing authority to enter a decision in accordance with the evidence in the official record. Second, if the applicable appointing authority did not adopt the recommended decision, the court shall determine whether the applicable appointing authority's decision states the specific reasons why the applicable appointing authority did not adopt the recommended decision. If the court determines that the applicable appointing authority did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the applicable appointing authority to enter the specific reasons.

(a1) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the administrative law judge's decision, the court shall determine whether the agency heard new evidence after receiving the decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. The court shall also determine whether the agency specifically rejected findings of fact contained in the administrative law judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b) of this section.

(b) Except as provided in subsection (c) of this section, in reviewing a final decision, the court may affirm the decision of the agency or remand the case to the agency or to the administrative law judge for further proceedings. It may also reverse or modify the agency's decision, or adopt the administrative law judge's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the administrative law judge's decision, the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record. The court reviewing a final decision under this subsection may adopt the administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2), or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the explanations; and may take any other action allowed by law.

(d) In reviewing a final agency decision allowing judgment on the pleadings or summary judgment, or in reviewing an agency decision that does not adopt an administrative law judge's decision allowing judgment on the pleadings or summary judgment pursuant to G.S. 150B-36(d), the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just. (1973, c. 1331, s. 1; 1983, c. 919, s. 4; 1985, c. 746, s. 1; 1987, c. 878, s. 19; 2000-140, s. 94.1; 2000-190, s. 11.)

Effect of Amendments. — Session Laws 2000-140, s. 94.1, effective July 21, 2000, in this section as amended by Session Laws 2000-190, s. 11, substituted "applicable appointing authority" for "agency" and substituted "applicable appointing authority's" for "agency's" in subsection (a).

Session Laws 2000-190, s. 11, effective January 1, 2001, and applicable to contested cases commenced on or after that date, inserted "and standard" in the catchline; in subsection (a), deleted the subsection heading, and inserted "and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1)" in the first sentence; added subsection (a1); rewrote subsection (b); rewrote subdivision (b)(6), which had read "Arbitrary or capricious"; and added subsections (c) and (d).

CASE NOTES

I. General Consideration.
II. Exceeding Statutory Authority or Jurisdiction.
IV. "Whole Record" Test.

I. GENERAL CONSIDERATION.

When De Novo Review Permissible. — Because appellees alleged in their petition for judicial review that appellants erroneously construed State and federal law regarding the relation between Medicare and Medicaid, the court would review the matter de novo and was free to substitute its judgment for that of the administrative agency. Duke Univ. Medical Ctr. v. Bruton, 134 N.C. App. 39, 516 S.E.2d 633 (1999).

Applied in Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772 (1999), cert. denied, 351 N.C. 122, — S.E.2d — (1999); Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96 (1999); Johnston Health Care Ctr., L.L.C. v. North Carolina Dep't of Human Resources, — N.C. App. —, 524 S.E.2d 352, 2000 N.C. App. LEXIS 20 (2000); Christenbury Surgery Ctr. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 611 (June 6, 2000); Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 782 (July 5, 2000).

Quoted in Dialysis Care of N.C., LLC v. North Carolina Dep't of Health & Human Servs., — N.C. App. —, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

II. EXCEEDING STATUTORY AUTHORITY OR JURISDICTION.

Exceeding Authority Did Not Prejudice Competitor. — While the Department of Health and Human Services technically exceeded its authority and jurisdiction and committed errors of law by awarding a certificate of need to establish a new dialysis center on the basis of an application that was never shown to be conforming to all applicable criteria, its actions did not prejudice the applicant's competitor because the alleged mistakes and omissions, made under a settlement agreement, were corrected by final agency decision. Bio-Medical Applications of N.C., Inc. v. North Carolina Dep't of Human Resources, 136 N.C. App. 103, 523 S.E.2d 677 (1999).

IV. "WHOLE RECORD" TEST.

"Whole Record" Test Inappropriate — The trial court erred in applying the "Whole Record" test where the appellant/ex-police officer alleged that the appellee/civil service board incorrectly applied the law in terminating his employment. The trial court was required to review that decision "de novo." Jordan v. Civil Serv. Bd., — N.C. App. —, 528 S.E.2d 927, 2000 N.C. App. LEXIS 416 (2000).

§ 150B-52. Appeal; stay of court's decision.

A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. The scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. In cases reviewed under G.S. 150B-51(c), the court's findings of fact shall be upheld if supported by substantial evidence. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 20; 2000-140, s. 94; 2000-190, s. 12.)

Effect of Amendments. — Session Laws 2000-140, s. 94, effective July 21, 2000, substituted "G.S. 150B-51(c)" for "G.S. 150B-51(a1)(3)" in this section as amended by Session Laws 2000-190, s. 12.

Session Laws 2000-190, s. 12, effective January 1, 2001, and applicable to contested cases commenced on or after that date, added the second and third sentences.

CASE NOTES

Applied in North Carolina Dep't of Cor. v. McNeely, 135 N.C. App. 587, 521 S.E.2d 730 (1999).

Chapter 153A.

Counties.

Article 7.

Taxation.

Article 10.

Law Enforcement and Confinement Facilities.

Part 1. Law Enforcement.

Part 2. Local Confinement Facilities.

Part 3. Satellite Jail/Work Release Units.

Article 15.

Public Enterprises.

Part 1. General Provisions.

Article 2.

Corporate Powers.

§ 153A-15. Consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county.

CASE NOTES

Quoted in County of Johnston v. City of Wilson, — N.C. App. —, 525 S.E.2d 826, 2000 N.C. App. LEXIS 137 (2000).

Article 4.

Form of Government.

Part 1. General Provisions.

§ 153A-27.1. Vacancies on board of commissioners in certain counties.

OPINIONS OF ATTORNEY GENERAL

For a discussion of the proper authority and procedures for appointing an interim county tax collector, see opinion of Attorney General to The Honorable Charles Beall, North Carolina House of Representatives, 1998 N.C.A.G. 35 (8/5/98).

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-62. Effective date of any alteration.

OPINIONS OF ATTORNEY GENERAL

Effect of County Referendum. — A referendum on reorganizing the Board of Commissioners in Madison County, if approved, would be effective for the next general election in which county offices are scheduled to be filled. See opinion of Attorney General to Mr. Larry Leake, Chairman, State Board of Elections, 1998 N.C.A.G. 37 (8/27/98).

Article 5.

Administration.

Part 1. Organization and Reorganization of County Government.

§ 153A-76. Board of commissioners to organize county government.

OPINIONS OF ATTORNEY GENERAL

For a discussion of the proper authority and procedures for appointing an interim county tax collector, see opinion of Attorney General to The Honorable Charles Beall, North Carolina House of Representatives, 1998 N.C.A.G. 35 (8/5/98).

§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.

CASE NOTES

Personal Jurisdiction Involving Negligent Placement of Foster Child. — Where defendants raised the issues of failure to state a claim and lack of subject matter jurisdiction, but failed to raise the issue of personal jurisdiction, and stipulated in the record before the appellate court that they were properly before the trial court, the defendants could not argue that they were not subject to suit under this section and Chapters 108A and 122C. Hobbs v. North Carolina Dep't of Human Resources, 135 N.C. App. 412, 520 S.E.2d 595 (1999).

Part 4. Personnel.

§ 153A-98. Privacy of employee personnel records.

OPINIONS OF ATTORNEY GENERAL

For discussion concerning legal impediments which prohibit employers from disclosing personal information about their employees, see opinion of Attorney General to Bryan E. Beatty, Inspector General, North Carolina Department of Justice, 1998 N.C.A.G. 49 (12/1/98).

§ 153A-99. County employee political activity.

OPINIONS OF ATTORNEY GENERAL

The provisions of this section and § 160A-169 are applicable to elected officials of counties and cities. See opinion of Attorney General to Mr. William R. Gilkeson, Staff Attorney, N.C. General Assembly, 1998 N.C.A.G. 1 (1/14/98).

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-103. Number of employees in offices of sheriff and register of deeds.

CASE NOTES

County Not Liable for Sheriff's Decision. — Because, pursuant to this section, sheriff/defendant, and not the county, had exclusive responsibility for discharging plaintiff/jailer (who claimed the discharge was retaliatory), the district court properly granted summary judgment for the county on plaintiff's § 1983 claims. Knight v. Vernon, 214 F.3d 544 (4th Cir. 2000).

Plaintiffs who made no claim that they were exempted from the employment-at-will rule other than that their employment was subject to a general order allowing appeal to a Termination Review Board had no property interest in their employment which could form the basis for a denial of due process. Buchanan v. Hight, 133 N.C. App. 299, 515 S.E.2d 225 (1999).

Article 6.

Delegation and Exercise of the General Police Power.

§ 153A-136. Regulation of solid wastes.

Local Modification. — Orange: 2000-107, s. 2 (except for Carr and Cheeks Precincts).

Article 7.

Taxation.

§ 153A-155. Uniform provisions for room occupancy taxes.

(a) Scope. — This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. — A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. — Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax.

The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. — The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. — A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. — A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Avery, Brunswick, Craven, Currituck, Davie, Granville, Madison, Nash, Person, Randolph, Scotland, and Transylvania Counties. (1997-102, s. 3; 1997-255, s. 2; 1997-342, s. 2; 1997-364, s. 3; 1997-410, s. 6; 1998-14, s. 2; 1999-155, s. 2; 1999-205, s. 2; 1999-286, s. 2; 2000-103, s. 5.)

Effect of Amendments. — Session Laws 2000-103, s. 5, effective October 1, 2000, and applicable to taxes collected on or after that date, added "Granville" to the list of counties in subsection (g).

§ 153A-156. Gross receipts tax on short-term leases or rentals.

(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. 105-275(42), a county may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one and one-half percent (1.5%) of the gross receipts from such short-term leases or rentals.

(b) If a county enacts the substitute and replacement gross receipts tax pursuant to this section, any entity required to collect the tax shall include a provision in each retail short-term lease or rental agreement noting that the percentage amount enacted by the county of the total lease or rental price, excluding highway use tax, is being charged as a tax on gross receipts. For purposes of this section, the transaction giving rise to the tax shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle. The tax shall be collected at the time of lease or rental and placed in a segregated account until remitted to the county.

(c) The collection and use of taxes under this section are not subject to highway use tax and are not included in the gross receipts of the entity. The proceeds collected under this section belong to the county and are not subject to creditor liens against the entity.

(d) A tax levied under this section shall be collected by the county but otherwise administered in the same manner as the tax levied under G.S. 105-164.4(a)(2).

(e) The following definitions apply in this section:

(1) Short-term lease or rental. — Defined in G.S. 105-187.1(4).

(2) Vehicle. — Any of the following:

a. A motor vehicle of the passenger type, including a passenger van, minivan, or sport utility vehicle.

b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to possess a commercial drivers license.

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

(f) The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of Chapter 105 of the General Statutes apply to a tax levied under this section. The county board of commissioners may exercise any power the Secretary of Revenue may exercise in collecting local sales and use taxes. (2000-2, s. 2; 2000-140, s. 75(b).)

Editor's Note. — Session Laws 2000-2, s. 5, made this section effective July 1, 2000.

Session Laws 2000-2, s. 4, directs the Fiscal Research Division of the General Assembly to compare the revenue generated statewide by the substitute and replacement gross receipts tax authorized by the act with the revenue that would have been generated by an ad valorem tax and to report its findings to the 2003 Session of the 2003-2004 General Assembly.

The definitions in subsection (e) have been set out in alphabetical order at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2000-140, s. 75(b), effective July 1, 2000, substituted "G.S. 105-275(42)" for "G.S. 105-275(41)" in subsection (a); substituted "highway use" for "sales" in subsections (b) and (c); deleted "private" preceding "passenger type" in subdivision (e)(2)a; and substituted "Chapter 105 of the General Statutes" for "this Chapter" in subsection (f).

Article 10.

Law Enforcement and Confinement Facilities.

Part 1. Law Enforcement.

§ 153A-212.1. Resources to protect the public.

Subject to the requirements of G.S. 7A-41, 7A-44.1, 7A-64, 7A-102, 7A-133, and 7A-467, a county may appropriate funds under contract with the State for the provision of services for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving threats to public safety. Nothing in this section shall be construed to obligate the General Assembly to make any appropriation to implement the provisions of this section. Further, nothing in this section shall be construed to obligate the Administrative Office of the Courts to maintain positions or services initially provided for under this section. (1999-237, s. 17.17(b); 2000-67, s. 15.4(e).)

Editor's Note. —
Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."
Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 15.4.(e), effective July 1, 2000, substituted "G.S. 7A-41, 7A-44.1, 7A-64, 7A-102, 7A-133, and 7A-467" for "G.S. 7A-64."

Part 2. Local Confinement Facilities.

§ 153A-221.1. Standards and inspections.

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training.

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child. (1973, c. 1230, s. 2; c. 1262, s. 10; 1975, c. 426, s. 2; 1983, c. 768, s. 21; 1997-443, s. 11A.118(a); 1998-202, s. 13(nn); 1999-423, s. 12; 2000-137, s. 4(hh).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(hh), effective July 20, 2000, deleted the former second paragraph, pertaining to the duty of the Director of the Office of Juvenile Justice to develop standards for county detention homes and regional detention homes.

§ 153A-224. Supervision of local confinement facilities.

CASE NOTES

Cited in Knight v. Vernon, 214 F.3d 544 (4th Cir. 2000).

Part 3. Satellite Jail/Work Release Units.

§ 153A-230.1. Definitions.

Unless otherwise clearly required by the context, the words and phrases defined in this section have the meanings indicated when used in this Part:

(1) "Office" means the Office of State Budget, Planning, and Management.

(2) "Satellite Jail/Work Release Unit" means a building or designated portion of a building primarily designed, staffed, and used for the housing of misdemeanants participating in a work release program. These units shall house misdemeanants only, except that, if he so chooses, the Sheriff may accept responsibility from the Department of Correction for the housing of felons who do not present security risks, who have achieved work release status, and who will be employed on work release, or for felons committed directly to his custody pursuant to G.S. 15A-1352(b). These units shall be operated on a full time basis, i.e., seven days/nights a week. (1987, c. 207, s. 1; 1987, (Reg. Sess., 1988), c. 1106, s. 1; 2000-140, s. 93.1(a).)

Effect of Amendments. —
Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (1).

§ 153A-230.2. Creation of Satellite Jail/Work Release Unit Fund.

(a) There is created in the Office of State Budget, Planning and Management the County Satellite Jail/Work Release Unit Fund to provide State grant funds for counties or groups of counties for construction of satellite jail/work release units for certain misdemeanants who receive active sentences. A county or group of counties may apply to the Office for a grant under this section. The application shall be in a form established by the Office. The Office shall:

(1) Develop application and grant criteria based on the basic requirements listed in this Part,
(2) Provide all Boards of County Commissioners and Sheriffs with the criteria and appropriate application forms, technical assistance, if requested, and a proposed written agreement,
(3) Review all applications,
(4) Select grantees and award grants,
(5) Award no more than seven hundred fifty thousand dollars ($750,000) for any one county or group of counties except that if a group of counties agrees to jointly operate one unit for males and one unit for females, the maximum amount may be awarded for each unit,
(6) Take into consideration the potential number of misdemeanants and the percentage of the county's or counties' misdemeanant population to be diverted from the State prison system,
(7) Take into consideration the utilization of existing buildings suitable for renovation where appropriate,
(8) Take into consideration the timeliness with which a county proposes to complete and occupy the unit,
(9) Take into consideration the appropriateness and cost effectiveness of the proposal,
(10) Take into consideration the plan with which the county intends to coordinate the unit with other community service programs such as intensive probation, community penalties, and community service.

When considering the items listed in subdivisions (6) through (10), the Office shall determine the appropriate weight to be given each item.

(b) A county or group of counties is eligible for a grant under this section if it agrees to abide by the basic requirements for satellite jail/work release units established in G.S. 153A-230.3. In order to receive a grant under this section, there must be a written agreement to abide by the basic requirements for satellite jail/work release units set forth in G.S. 153A-230.3. The written agreement shall be signed by the Chairman of the Board of County Commissioners, with approval of the Board of County Commissioners and after consultation with the Sheriff, and a representative of the Office of State Budget, Planning, and Management. If a group of counties applies for the grant, then the agreement must be signed by the Chairman of the Board of County Commissioners of each county. Any variation from, including termination of, the original signed agreement must be approved by both the Office of State Budget, Planning, and Management and by a vote of the Board of County Commissioners of the county or counties.

When the county or group of counties receives a grant under this section, the county or group of counties accepts ownership of the satellite jail/work release unit and full financial responsibility for maintaining and operating the unit, and for the upkeep of its occupants who comply with the eligibility criteria in G.S. 153A-230.3(a)(1). The county shall receive from the Department of Correction the amount paid to local confinement facilities under G.S. 148-32.1 for prisoners which are in the unit, but do not meet the eligibility of requirements under G.S. 153A-230.3(a)(1). (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, ss. 2, 3; 1989, c. 761, s. 2; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

§ 153A-230.5. Satellite jails/work release units built with non-State funds.

(a) If a county is operating a satellite jail/work release unit prior to the enactment of this act, the county may apply to the Office of State Budget, Planning, and Management for grant funds to recover any verifiable construction or renovation costs for those units and for improvement funds except that the total for reimbursement and improvement shall not exceed seven hundred fifty thousand dollars ($750,000). Any county accepting such a grant or any other State monies for county satellite jails must agree to all of the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3.

(b) If a county operates a non-State funded satellite jail/work release unit that does not comply with the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3, then the satellite jail shall be subject to the standards, rules, and regulations to be promulgated by the Secretary of Health and Human Services pursuant to Part 2 of Article 10 of Chapter 153A. If a county is reimbursed for the cost of a prisoner's keep from an inmate's work release earnings in an amount equal to or greater than that paid by the Department of Correction to local confinement facilities under G.S. 148-32.1, the county may not receive additional payments from the department for the cost of a prisoner's keep. However, if reimbursement to the county for the cost of a prisoner's keep is less than the amount allowed under G.S. 148-32.1, the county may receive from the Department of Correction the difference in the amount received from work release earnings and the amount paid by the department to local confinement facilities. The department may promulgate rules regarding such payment arrangements. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, s. 7; 1989, c. 761, s. 5; 1997-443, s. 11A.118(a); 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in subsection (a).

Article 13.

Health and Social Services.

Part 1. Health Services.

§ 153A-250. Ambulance services.

CASE NOTES

County-operated ambulance service was entitled to governmental immunity, even though it charged a fee to help defray operating costs. McIver v. Smith, 134 N.C. App. 583, 518 S.E.2d 522 (1999).

Article 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined.

As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems.
(2) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(3) Solid waste collection and disposal systems and facilities.
(4) Airports.
(5) Off-street parking facilities.
(6) Public transportation systems.
(7) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types. (1965, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1971, c. 568; 1973, c. 822, s. 1; c. 1214; 1977, c. 514, s. 1; 1979, c. 619, s. 1; 1989, c. 643, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 13; 2000-70, s. 1.)

Editor's Note. — Session Laws 2000-70, s. 8, effective June 30, 2000, is a severability clause.

Effect of Amendments. — Session Laws 2000-70, s. 1, effective retroactively to July 15, 1989, added the language beginning "Stormwater management programs" and ending "stormwater and" in subdivision (7); and made stylistic and punctuation changes throughout.

CASE NOTES

Cited in McIver v. Smith, 134 N.C. App. 583, 518 S.E.2d 522 (1999).

§ 153A-277. Authority to fix and enforce rates.

(a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county. A county may include a fee relating to subsurface discharge wastewater management systems and services on the property tax bill for the real property where the system for which the fee is imposed is located.

(a1)(1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

(2) The fees established under this subsection must be made applicable throughout the area of the county outside municipalities. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the county's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The county's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

(3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(b) A county may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A county may also discontinue service to a customer whose account remains delinquent for more than 10 days. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises. If water or sewer services are discontinued for delinquency, it is unlawful for a person other than a duly authorized agent or employee of the county to reconnect the premises to the water or sewer system.

(c) Rents, rates, fees, charges, and penalties for enterprisory services are in no case a lien upon the property or premises served and, except as provided in subsection (d) of this section, are legal obligations of the person contracting for them, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services are legal obligations of the owner of the property or premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter; or

(2) Charges made for use of a sewerage system are billed separately from charges made for the use of a water distribution system. (1961, c. 1001, s. 1; 1973, c. 822, s. 1; 1991, c. 591, s. 2; 1991 (Reg. Sess., 1992), c. 932, s. 3; c. 1007, s. 45; 2000-70, s. 2.)

Editor's Note. — Session Laws 2000-70, s. 8, effective June 30, 2000, is a severability clause.

Effect of Amendments. — Session Laws 2000-70, s. 2, effective retroactively to July 15, 1989, added subdivision designations (1) through (3) in subsection (a1); inserted "stormwater management programs and" in subdivision (a1)(1); in subdivision (a1)(2), inserted "stormwater management programs and" in the second sentence, inserted "stormwater management program and a structural and natural" in the third sentence, and added the fourth sentence; and in subdivision (a1)(3), inserted "stormwater management programs or separate" in the first sentence, substituted "stormwater management program and structural" for "single structural" in the second sentence, and inserted "stormwater management programs and" in the third sentence.

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-320. Territorial jurisdiction.

Local Modification. — Mecklenburg: 2000-77 (as to applicability, see 2000-77, s. 2). Wake: 2000-66, s. 1; city of Raleigh: 2000-66, s. 1; town of Apex: 2000-66, s. 1; town of Cary: 2000-66, s. 1; town of Garner: 2000-66, s. 1. For additional local modifications to this section, see the main volume.

Part 2. Subdivision Regulation.

§ 153A-335. "Subdivision" defined.

Local Modification. — Richmond: 2000-11. For additional local modifications to this section, see the bound volume.

Part 3. Zoning.

§ 153A-340. Grant of power.

Legal Periodicals. —
For note, "Hog Farms and Nuisance Law in Parker v. Barefoot: Has North Carolina Become a Hog Heaven and Waste Lagoon?" see 77 N.C. L. Rev. 2355 (1999).

CASE NOTES

Constitutional Protections. — This Part, §§ 153A-340 through 153A-345, provide adequate constitutional protections for an aggrieved party. JWL Invs., Inc. v. Guilford County Bd. of Adjustment, 133 N.C. App. 426, 515 S.E.2d 715 (1999).

§ 153A-345. Board of adjustment.

CASE NOTES

Power of Board to Impose Civil Penalties. — Since the Board possesses all powers of the enforcement officer for non-compliance, the trial court did not err in finding that the Board had authority to impose civil penalties. JWL Invs., Inc. v. Guilford County Bd. of Adjustment, 133 N.C. App. 426, 515 S.E.2d 715 (1999).

County Board of Adjustment Rightly Applied Local Notice Provision. — Section 1A-1-6 did not apply in a case where the language of a local ordinance was clear and unambiguous in its requirement that a minimum ten-day "notice of public hearing" be given and further stated how that ten days should be calculated. Richardson v. Union County Bd. of Adjustment, 136 N.C. App. 134, 523 S.E.2d 432 (1999).

Board's Action Upheld. — Petitioners failed to show that Board of Adjustment acted arbitrarily or capriciously in combining standards for granting a special use permit to a broadcasting company. Richardson v. Union County Bd. of Adjustment, 136 N.C. App. 134, 523 S.E.2d 432 (1999).

Applied in JWL Invs., Inc. v. Guilford County Bd. of Adjustment, 133 N.C. App. 426, 515 S.E.2d 715 (1999).

Part 4. Building Inspection.

§ 153A-352. Duties and responsibilities.

OPINIONS OF ATTORNEY GENERAL

Statutorily Obligated Services to School System. — Any agreement between a county school system and the county or a municipality which obligates a school system to pay the county or municipality "development charges" under the guise of consideration for services which the county or municipality is statutorily obligated to provide would be null and void as contrary to legislative intent. See opinion of Attorney General to The Honorable J. Sam Ellis House of Representatives, 1998 N.C.A.G. 41 (10/13/98).

§ 153A-363. Certificates of compliance.

CASE NOTES

Cited in Nolan v. Paramount Homes, Inc., 135 N.C. App. 73, 518 S.E.2d 789 (1999).

Article 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

CASE NOTES

Immunity Not Waived by Ambulance Service. — Defendant/county-operated ambulance service did not waive its immunity for claims totaling less than $250,000 since it was only insured for negligence claims equal to or above that amount. McIver v. Smith, 134 N.C. App. 583, 518 S.E.2d 522 (1999).

Cited in Lovelace v. City of Shelby, 351 N.C. 458, 526 S.E.2d 652 (2000).

Chapter 158.

Local Development.

Article 2.

Economic Development Commissions.

Article 1.

Local Development Act of 1925.

§ 158-7.1. Local development.

OPINIONS OF ATTORNEY GENERAL

A business development investment grant program designed to offer tax rebates for the purposes of "diversify[ing] the tax base, offer[ing] improved employment opportunities for the citizens" and "promot[ing] economic growth" may be permissible under this section depending upon whether it primarily serves a public purpose. See opinion of Attorney General to Robert B. Smith, Jr., Smith and Gamblin, PLLC Attorneys at Law, 1997 N.C.A.G. 55 (8/29/97).

Article 2.

Economic Development Commissions.

§ 158-8.2. Creation of Northeastern North Carolina Regional Economic Development Commission.

OPINIONS OF ATTORNEY GENERAL

North Carolina's Northeast Partnership is an "agency" within the meaning of § 132-1(a), and accordingly is fully subject to the Public Records Act; the Northeastern North Carolina Regional Economic Development Commission from which it emerged is an agency located administratively in the North Carolina Department of Commerce, although it has attempted to remove itself from the Department. See opinion of Attorney General to Melanie Thompson, Fiscal Manager, North Carolina's Northeast Partnership, 1999 N.C.A.G. 9 (3/9/99).

§ 158-12.1. Commission funds secured.

The Western North Carolina Regional Economic Development Commission, Research Triangle Regional Commission, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, Global TransPark Development Commission, and Carolinas Partnership, Inc., may deposit money at interest in any bank, savings and loan association, or trust company in this State in the form of savings accounts, certificates of deposit, or such other forms of time deposits as may be approved for county governments. Investment deposits and money deposited in an official depository or deposited at interest shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this section, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository. This section applies to the regional economic development commissions listed in this section only for as long as the commissions are receiving State funds. (2000-67, s. 14.9.)

Editor's Note. — Session Laws 2000-67, s. 28.5, made this section effective July 1, 2000.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Chapter 159.

Local Government Finance.

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. Short title; definitions; local acts superseded.

Local Modification. — Town of Midland: (For fiscal year 2000-2001, and contingent on local referendum) 2000-91, s. 2. For additional local modifications to this section, see the bound volume.

§ 159-13. The budget ordinance; form, adoption, limitations, tax levy, filing.

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

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

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

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

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.
(3) A contingency appropriation shall not exceed five percent (5%) of the total of all other appropriations in the same fund, except there is no limit on contingency appropriations for public assistance programs required by Chapter 108A. Each expenditure to be charged against a contingency appropriation shall be authorized by resolution of the governing board, which resolution shall be deemed an amendment to the budget ordinance setting up an appropriation for the object of expenditure authorized. The governing board may authorize the budget officer to authorize expenditures from contingency appropriations subject to such limitations and procedures as it may prescribe. Any such expenditures shall be reported to the board at its next regular meeting and recorded in the minutes.
(4) No appropriation may be made that would require the levy of a tax in excess of any constitutional or statutory limitation, or expenditures of revenues for purposes not permitted by law.
(5) The total of all appropriations for purposes which require voter approval for expenditure of property tax funds under Article V, Sec. 2(5), of the Constitution shall not exceed the total of all estimated revenues other than the property tax (not including such revenues required by law to be spent for specific purposes) and property taxes levied for such purposes pursuant to a vote of the people.
(6) The estimated percentage of collection of property taxes shall not be greater than the percentage of the levy actually realized in cash as of June 30 during the preceding fiscal year. For purposes of the calculation under this subdivision only, the levy for the registered motor vehicle tax under Article 22A of Chapter 105 of the General Statutes shall be based on the nine-month period ending March 31 of the preceding fiscal year, and the collections realized in cash with respect to this levy shall be based on the 12-month period ending June 30 of the preceding fiscal year.
(7) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year, including amounts to be realized from collections of taxes levied in prior fiscal years.
(8) Repealed by Session Laws 1975, c. 514, s. 6.
(9) Appropriations made to a school administrative unit by a county may not be reduced after the budget ordinance is adopted, unless the board of education of the administrative unit agrees by resolution to a reduction, or unless a general reduction in county expenditures is required because of prevailing economic conditions.
(10) Appropriations made to another fund from a fund established to account for property taxes levied pursuant to a vote of the people may not exceed the amount of revenues other than the property tax available to the fund, except for appropriations from such a fund to an appropriate account in a capital reserve fund.
(11) Repealed by Session Laws 1975, c. 514, s. 6.
(12) Repealed by Session Laws 1981, c. 685, s. 4.
(13) No appropriation of the proceeds of a bond issue may be made from the capital project fund account established to account for the proceeds of the bond issue except (i) for the purpose for which the bonds were issued, (ii) to the appropriate debt service fund, or (iii) to an account within a capital reserve fund consistent with the purposes for which the bonds were issued. The total of other appropriations made to another fund from such a capital project fund account may not exceed the amount of revenues other than bond proceeds available to the account.

(14) No appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service fund unless the total of all other appropriations in the fund equal or exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes.

(15) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the governing board the right to limit or not to make such appropriation.

(16) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

(17) No appropriations may be made from a county reappraisal reserve fund except for the purposes for which the fund was established.

(18) No appropriation may be made from a service district fund to any other fund except (i) to the appropriate debt service fund or (ii) to an appropriate account in a capital reserve fund unless the district has been abolished.

(19) No appropriation of the proceeds of a debt instrument may be made from the capital project fund account established to account for such proceeds except for the purpose for which such debt instrument was issued. The total of other appropriations made to another fund from such a capital project fund account may not exceed the amount of revenues other than debt instrument proceeds available to the account.

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

(c) The budget ordinance of a local government shall levy taxes on property at rates that will produce the revenue necessary to balance appropriations and revenues, after taking into account the estimated percentage of the levy that will not be collected during the fiscal year. The budget ordinance of a public authority shall be balanced so that appropriations do not exceed revenues.

(d) The budget ordinance shall be entered in the minutes of the governing board and within five days after adoption copies thereof shall be filed with the finance officer, the budget officer, and the clerk to the governing board. (1927, c. 146, s. 8; 1955, cc. 698, 724; 1969, c. 976, s. 2; 1971, c. 780, s. 1; 1973, c. 474, ss. 7-9; c. 489, s. 3; 1975, c. 437, ss. 13, 14; c. 514, ss. 5, 6; 1981, c. 685, ss. 3-5, 10; 1987, c. 796, s. 3(2); 1989, c. 756, s. 2; 1999-261, s. 1; 2000-140, s. 80.)

Effect of Amendments. — Session Laws 2000-140, s. 80, effective July 21, 2000, in subdivision (b)(6), substituted "Article 22A" for "Article 22C" and substituted "12-month" for "twelve month."

Part 3. Fiscal Control.

§ 159-28. Budgetary accounting for appropriations.

CASE NOTES

Later-Incurred Financial Obligation. — Where an obligation incurred by a town did not result in a financial obligation in the year in which the subject contract was signed, the lack of a pre-audit certificate did not invalidate the town's contract. Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122 (1999).

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 5.

Revenue Bonds.

§ 159-88. Adoption of revenue bond order.

Editor's Note. —

Session Laws 2000-81, ss. 1-8, effective July 5, 2000, authorizes the issuance of state revenue bonds, not to exceed $40,000,000, to finance improvements to the water and sewer system for the Community of Butner and Camp Butner reservation. Specifically, the bonds are for paying the costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, and extension of the water supply and distribution system and sewage collection and disposal system and certain costs of issuance of the bonds. The bonds are to be issued in compliance the State and Local Government Revenue Bond Act, pursuant to an order adopted by the Council of State under G.S. 159-88, and are to be sold by the Local Government Commission pursuant to the provisions of Article 7 of Chapter 159. The bonds are tax exempt, excepting estate, inheritance, or gift taxes, income taxes on the gain from transfer of securities, and franchise taxes. Section 7 of the act provides that the act is supplemental and additional to powers conferred by other laws. It, being necessary for the health and welfare of the people of the State, is to be liberally construed. Section 7(d) contains a severability clause.

ARTICLE 7.

Issuance and Sale of Bonds.

§ 159-123. Sale of bonds by sealed bids; private sales.

(a) Bonds issued by units of local government shall be sold by the Local Government Commission after advertisement and upon sealed bids, except as otherwise authorized by subsection (b) of this section.

(b) The following classes of bonds may be sold at private sale:

(1) Bonds that a State or federal agency has previously agreed to purchase.

(2) Any bonds for which no legal bid is received within the time allowed for submission of bids.

(3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Chapter 159I of the General Statutes.

(4) Refunding bonds issued pursuant to G.S. 159-78.

(5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(6) Bonds designated as qualified zone academy bonds pursuant to G.S. 115C-489.6, if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(c) When the issuing unit wishes to have a private sale of bonds, the governing board of the issuing unit shall adopt and file with the Commission a resolution requesting that the bonds be sold at private sale without advertisement to any purchaser or purchasers thereof, at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices. Upon receipt of a resolution requesting a private sale of bonds, the Commission may offer them to any purchaser or purchasers without advertisement, and may sell them at any price the Commission deems in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or the person or persons designated by resolution of the governing board of the issuing unit to approve such prices. For purposes of this subsection, any resolution of the governing board of the issuing unit which designates a person or persons to approve any price or prices shall also establish a minimum purchase price and a maximum interest rate or maximum interest cost and such other provisions relating to approval as it may determine. Notwithstanding any provisions of this Chapter to the contrary, general obligation bonds issued pursuant to Article 4 of this Chapter may be sold at private sale at not less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest.

(d) This section shall not apply to funding or refunding bonds when the governing board of the issuing unit and the holders of the debt to be funded or refunded have agreed to exchange the original obligations for new ones at the same or an adjusted rate of interest. This section also shall not apply to debt instruments that the State has previously agreed to purchase pursuant to Chapter 159G of the General Statutes.

(e) The issuing unit shall have the authority, subject to approval by the Commission, to select and retain the financial consultants, underwriters and bond attorneys to be associated with the bond issue. If the issuing unit shall affirmatively find that the underwriter, financial consultant or bond attorney selected and retained has adequately provided, in similar financial transactions, services of a nature and sophistication comparable to those required for the issuance and sale of the bonds in question and possesses the expertise necessary to perform the services required, approval of a financial consultant, underwriter or bond attorney shall not be withheld by the Commission solely for the reason that the underwriter, financial consultant or bond attorney has not had prior experience in the issuance and sale of a particular type, class or size of bond issue for which the underwriter, financial consultant or bond attorney is retained.

(f) The Commission shall not reject an application for approval of a bond issue because of the issuing units' selection of financial consultants, underwriters or bond attorneys so long as the selection is made in accordance with G.S. 159-123(e). Nothing herein shall limit or otherwise modify the role or powers of the Commission and its staff to review, approve, sell or participate in the sale of bonds pursuant to this Article. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1977, c. 201, s. 4; 1985, c. 723, s. 1; 1987, c. 585, s. 3; c. 796, s. 4; 1989, c. 756, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 43; 2000-69, s. 2.)

Editor's Note. —
Session Laws 2000-69, ss. 4(a)-(c), provide: "Interpretation of Act."

"(a) Additional Method. This act provides an additional and alternative method for the doing of the things it authorizes and is as supplemental and additional to powers conferred by other laws. Except as otherwise expressly provided, it does not derogate any powers now existing."

"(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly."

"(c) Liberal Construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-69, s. 4(d) contains a severability clause.

Effect of Amendments. — Session Laws 2000-69, s. 2, effective June 30, 2000, added subdivision (b)(6).

Chapter 159C.

Industrial and Pollution Control Facilities Financing Act.

§ 159C-3. Definitions.

The following definitions apply in this Chapter:

(1) Agency. — Any agency, bureau, commission, department, or instrumentality.

(2) Air pollution control facility. — Any structure, equipment, or other facility for, including any increment in the cost of any structure, equipment, or facility attributable to, the purpose of treating, neutralizing, or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing, or stabilizing plants and equipment and their appurtenances, which have been certified by the government entity having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.

(3) Bonds. — Revenue bonds of an authority issued under the provisions of this Chapter.

(4) Cost. — This term as applied to any project embraces all capital costs of the project, including all of the following:

a. The cost of construction.

b. The cost of acquisition of all property, including rights in land and other property, real and personal and improved and unimproved.

c. The cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved or relocated.

d. The cost of all machinery and equipment, installation, start-up expenses, financing charges, and interest prior to, during and for a period not exceeding one year after completion of construction.

e. The cost of engineering and architectural surveys, plans and specifications.

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

(5) Repealed by Session Laws 2000, c. 179, s. 3, effective August 1, 2000.

(6) Financing agreement. — A written instrument establishing the rights and responsibilities of the authority, operator, and obligor with respect to a project financed by the issuance of bonds. A financing agreement may be in the nature of a lease, a lease and leaseback, a sale and leaseback, a lease purchase, an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan agreement or other similar contract and may involve property in addition to the property financed with the bonds.

(6a) Governing body. — The board, commission, council, or other body in which the general legislative powers of any county or other political subdivision are vested.

(6b) Industrial project. — Any industrial or manufacturing factory, mill, assembly plant, or fabricating plant; freight terminal; industrial research, development, or laboratory facility; industrial processing facility; or distribution facility for industrial or manufactured products.

(7) Obligor. — Any person, which may include the operator, who is obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor.

(8) Operator. — The person entitled to the use or occupancy of a project.

(9) Political subdivision. — Any county, city, town, other unit of local government or any other governmental corporation, authority, or instrumentality of the State now or hereafter existing.

(10) Pollution or pollutants. — Any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render the air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.

(10a) Pollution control project. — Any air pollution control facility, water pollution control facility, or solid waste disposal facility if the facility is in connection with either an industrial project or a public utility plant.

(11) Project. — Any land or equipment or one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project, (ii) any pollution control project for industry or for public utilities, (iii) any special purpose project, or (iv) any combination of projects mentioned in clauses (i) through (iii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition to it.

(12) Revenues. — With respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived from the project or from the financing agreement or security document in connection with the project.

(13) Security document. — A written instrument establishing the rights and responsibilities of the authority and the holders of bonds issued to finance a project, which may provide for, or be in the form of an agreement with, a trustee for the benefit of the bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the authority's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement

and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument.

(14) Solid waste. — Solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.

(15) Solid waste disposal facility. — A facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.

(15a) Special purpose project. — Any structure, equipment, or other facility for any one or more of the following purposes:

a. Water systems or facilities, including all plants, works, instrumentalities, and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage, other than facilities constituting a water pollution control facility.

c. Public transportation systems, facilities, or equipment, including bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

d. Public parking lots, areas, garages, and other public vehicular parking structures and facilities.

e. Public auditoriums, gymnasiums, stadiums, and convention centers.

f. Recreational facilities.

g. Land, equipment, and facilities for the disposal, treatment, or recycling of solid or other waste that are described in G.S. 159I-8.

h. Facilities for the provision of rehabilitation services, education, training, and employment opportunities for persons with disabilities and the disadvantaged. The term does not include a retail facility, however, unless the proposed operator of the facility certifies that at least seventy-five percent (75%) of its employees will be disadvantaged or disabled persons and at least seventy-five percent (75%) of its inventory will be composed of used, donated items and items manufactured by disadvantaged or disabled persons.

(16) Water pollution control facility. — Any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which have been certified by the agency exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution. (1975, c. 800, s. 1; 1977, 2nd Sess., c. 1197; 1979, c. 109, s. 1; 1995 (Reg. Sess., 1996), c. 575, ss. 4, 5; 2000-179, s. 3.)

Effect of Amendments. — Session Laws 2000-179, s. 3, effective July 1, 2000, rewrote the section.

§ 159C-5. General powers.

Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
(2) To adopt an official seal and alter the same at pleasure;
(3) To maintain an office at such place or places within the boundaries of the county for which it was created as it may determine;
(4) To sue and be sued in its own name, plead and be impleaded;
(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
(6) To make and execute financing agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the authority under this Chapter;
(7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, and interests in land less than the fee thereof, for the construction, operation or maintenance of any project;
(7a) To acquire by purchase, lease, gift, or otherwise, but not by eminent domain, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, and interests in land less than the fee interest, for the construction, operation, or maintenance of any project;
(8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
(9) To pledge or assign revenues of the authority;
(10) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the authority or from any contribution, gift or donation or other funds made available to the authority for such purpose;
(11) To fix, charge and collect revenues with respect to any project;
(12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and
(13) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers herein granted. (1975, c. 800, s. 1; 1979, c. 109, s. 1; 1985, c. 723, s. 3; 2000-179, s. 4.)

Effect of Amendments. — Session Laws 2000-179, s. 4, effective July 1, 2000, added subdivision (7a).

§ 159C-6. Bonds.

(a) Each authority is authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of the bonds shall be payable solely from the funds authorized in this Article for their payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at any time or times not exceeding 35 years after the date of their issuance, and may be made redeemable before maturity at any price or prices and under any terms and conditions, as may be fixed by the authority before the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached to them, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of all or part of the project for which the bonds were issued, and shall be disbursed in any manner and under any restrictions, as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, are less than this cost, additional bonds may in like manner be issued to provide the amount of the deficiency.

(c) The proceeds of bonds shall not be used to refinance the cost of an industrial project or a pollution control project. For the purposes of this section, a cost of an industrial project or a pollution control project is considered refinanced if both of the following conditions are met:

(1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.

(2) The original expenditure was paid more than 60 days before the authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

(d) Notwithstanding subsection (c) of this section, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of an industrial project or a pollution control project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the authority's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, regardless of whether or not they are incurred or paid within 60 days of the authority's action, does not include costs that are incurred incident to the commencement of the construction of an industrial project or a pollution control project, such as expenditures for land acquisition and site preparation. In any event, an expenditure in connection with an industrial project or a pollution control project originally paid before the authority took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may be reimbursed from bond proceeds only if the authority finds that reimbursing those costs from bond proceeds will promote the purposes of this Chapter.

(e) An authority may make loans to an obligor to refund outstanding loans, obligations, deeds of trust, or advances issued, made, or given by the obligor for the cost of a special purpose project.

(f) The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds that become mutilated or are destroyed or lost.

(g) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of the bonds and securing the bonds. (1975, c. 800, s. 1; 1979, c. 109, s. 1; 1997-111, s. 1; 1997-463, s. 1; 2000-179, s. 5.)

Effect of Amendments. — Session Laws 2000-179, s. 5, effective July 1, 2000, designated the former first through fourth undesignated paragraphs as present subsections (a) through (d), respectively, added subsection (e) and designated the former fifth and sixth undesignated paragraphs as present subsections (f) and (g); in subsection (a), substituted "authorized in this Article for their" for "herein authorized for such" and deleted "of North Carolina" following "Local Government Commission"; substituted "all or part of the project" for "the project or projets, or a portion thereof" in subsection (b); inserted "an industrial project or a pollution control" twice in subsection (c); in subsection (d), substituted "Notwithstanding subsection (c) of this section" for "However," substituted "an industrial project or a pollution control project" for "a project" twice and inserted "in connection with an industrial project or a pollution control project"; substituted "the bonds and securing the bonds" for "such bonds and securing the same" in subsection (g); and made minor wording and punctuation changes throughout the section.

§ 159C-7. Approval of industrial projects and pollution control projects by Secretary of Commerce.

(a) Approval Required. — No bonds may be issued by an authority to finance an industrial project or a pollution control project unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed industrial project or pollution control project with the Secretary of Commerce, and shall notify the Local Government Commission of the filing.

(b) Findings. — The Secretary shall not approve any proposed industrial project or pollution control project unless the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project,

a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) is above the average weekly manufacturing wage paid in the county, or (ii) is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and

b. That the proposed project will not have a materially adverse effect on the environment.

(2) In the case of a proposed pollution control project, that the project will have a materially favorable impact on the environment or will prevent

or diminish materially the impact of pollution which would otherwise occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In the case of an industrial project or a pollution control project, except a pollution control project for a public utility,

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate the project, and

c. That the financing of the project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(b1) Initial Operator. — If the initial proposed operator of an industrial project or a pollution control project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(c) Public Hearing. — The Secretary of Commerce shall not approve any proposed industrial project or pollution control project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d) Certificate of Department of Environment and Natural Resources. — The Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary of Commerce shall not make the findings required by subdivision (2a) unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time.

(e) Waiver of Wage Requirement. — If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in subdivision (b)(1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed industrial project if the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed industrial project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. — To facilitate review of each proposed industrial project or pollution control project, the Secretary may require the authority to obtain and submit any data and information about the project the Secretary may prescribe. The Secretary may also prescribe forms and rules the Secretary considers reasonably necessary to implement the provisions of this section.

(g) Certificate of Approval. — If the Secretary approves the proposed industrial project or pollution control project, the Secretary shall prepare a certificate of approval evidencing the approval and setting forth the findings and shall cause the certificate of approval to be published in a newspaper of general circulation within the county. This approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes only by an action filed, within 30 days after notice of the findings and approval have been so published, in the Superior Court of Wake County. The superior court is vested with jurisdiction to hear the action, but if no action is filed within the 30 days prescribed, the validity of the approval is conclusively presumed, and no court has authority to inquire into the approval. Copies of the certificate of approval of the proposed industrial project or pollution control project will be given to the authority, the board of county commissioners, and the Secretary of the Local Government Commission.

The certificate of approval becomes effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate expires one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed industrial project or pollution control project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the industrial project or pollution control project, however, the certificate expires three years after the date of the first issuance of the bonds. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, ss. 2, 3; c. 771, s. 4; 1979, c. 109, s. 1; 1981, c. 704, s. 22; 1987, c. 827, s. 1; 1989, c. 727, ss. 218(161), 219(38); c. 751, s. 8(29); 1991 (Reg. Sess., 1992), c. 959, s. 79; 1995 (Reg. Sess., 1996), c. 575, s. 6; 1997-443, s. 11A.123; 1997-463, s. 2; 2000-179, s. 6.)

Effect of Amendments. — Session Laws 2000-179, s. 6, effective July 1, 2000, substituted "industrial projects and pollution control projects" for "project" in the catchline; designated the former last paragraph in subsection (b) as subsection (b1); inserted "to finance an industrial project or a pollution control project" in subsection (a); substituted "the case of and industrial project or a pollution control project" for "any case (whether the proposed project is an industrial or a pollution control project)" in subdivision (b)(3); in subsection (b1), inserted "Initial Operator," substituted "an industrial project or a pollution control project" for "a project," and substituted "subdivisions (b)(1)a. and (3)b. of this section" for "subdivisions (1)a. and (3)b."; substituted "subdivisions (b)(1)b and (2)" for "subdivisions (1)b and (2)" in subsection (d); in subsection (e), substituted "subdivision (b)(1)a" for "subparagraph (1)a" and inserted "industrial" twice; in subsection (g), deleted "of North Carolina" following "General Statutes" and substituted "board of county commissioners" for "governing body of the county"; in the last paragraph, substituted "becomes effective" for "shall become effective" and substituted "expires" for "shall expire" twice; and throughout the section, inserted "industrial project or pollution control" and made minor wording changes.

§ 159C-8. Approval of bonds.

(a) No bonds may be issued by an authority unless the issuance of the bonds is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of Commerce of the filing if the project is an industrial project or pollution control project.

(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may consider any of the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as credit enhancement, insurance, guaranties or property to be pledged to secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of the project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for the project and on account of any increase in population which are expected to result from the project.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

(4) Any other factors the Commission considers relevant.

(c) The Local Government Commission shall not approve the issuance of bonds for a special purpose project unless the governing body of the county in which the special purpose project is located has conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purposes of paying all or a part of the proposed special purpose project. Notice of the public hearing must be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice must describe generally the bonds proposed to be issued and the proposed special purpose project, including its general location, and any other information the governing body considers appropriate.

(d) If the initial proposed operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the Local Government Commission may consider the matters required under subdivision (b)(1) of this section only with respect to the initial operator. The obligor shall be obligated to perform all of the duties of the obligor required hereunder during the term the bonds are outstanding. The Local Government Commission shall evaluate the obligor's ability to perform these duties without regard to whether the initial proposed operator of the project is expected to be the operator for the term of the bonds proposed to be issued. To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit any financial data and information about the proposed bond issue and the security for it, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe any forms and rules the Secretary considers reasonably necessary to implement the provisions of this section. (1975, c. 800, s. 1; 1977, c. 198, s. 23; 1979, c. 109, s. 1; 1989, c. 751, s. 7(49); 1991 (Reg. Sess., 1992), c. 959, s. 80; 1995 (Reg. Sess., 1996), c. 575, s. 7; 2000-179, s. 7.)

Effect of Amendments. — Session Laws 2000-179, s. 7, effective July 1, 2000, designated the former first and second undesignated paragraphs as subsection (a), the former third undesignated paragraph as subsection (b), and the former fourth undesignated paragraph as subsection (d); added subdivision (b)(4) and subsection (c); substituted "of the bonds" for "thereof" in the first paragraph in subsection (a), and substituted "Secretary of Commerce of the filing if the project is an industrial project or pollution control project" for "Secretary of the Department of Commerce of such filing" in the second paragraph in subsection (a); substituted "consider any of" for "consider, without limitation" in subsection (b); inserted "credit enhancement" in subdivision (b)(1); substituted "from the project" for "therefrom" in subdivision (b)(2); in subsection (d), substituted "subdivision (b)(1) of this section" for "subdivision (1)" and substituted "any forms and rules the Secretary considers" for "such forms and such rules and regulations as he shall deem"; and made minor wording changes throughout the section.

§ 159C-11. Financing agreements.

(a) Every financing agreement shall provide that:

(1) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and redemption premium, if any, and interest on the bonds issued by the authority to pay the cost of the project as they respectively become due.

(2) The obligor shall pay all costs incurred by the authority in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others.

(3) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project.

(4) The obligor's obligation to provide for the payment of the bonds in full is not subject to cancellation, termination or abatement until payment of the bonds or provision for their payment has been made.

(5) If the proposed initial operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the financing agreement shall require that the obligor attempt to arrange for a new operator when the current operator discontinues serving as operator. The new operator is subject to the approval of the Secretary under subdivisions (b)(1)a. and (3)b. of G.S. 159C-7 if the project is an industrial project or a pollution control project, and is subject in any event to the approval of the Local Government Commission under G.S. 159C-8.

(b) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor has an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision for payment, has been made.

The financing agreement may provide the authority with rights and remedies in the event of a default by the obligor under the agreement, including any one or more of the following:

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

(c) The authority's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the authority need not have any ownership or possessory interest in the project.

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

The financing agreement may contain any additional provisions the authority considers necessary or convenient to effectuate the purposes of this Chapter. (1975, c. 800, s. 1; 1979, c. 109, s. 1; 1995 (Reg. Sess., 1996), c. 575, s. 8; 2000-179, s. 8.)

Effect of Amendments. — Session Laws 2000-179, s. 8, effective July 1, 2000, designated the existing undesignated paragraphs as subsections (a), (b) and (c); deleted "but without limitation" following "including" in subdivision (a)(2); substituted "for their payment has been" for "therefor shall be" in subdivision (a)(4); and in subdivision (a)(5), substituted "subdivisions (b)(1)a." for "subdivisions (1)a." and substituted "if the project is an industrial project or a pollution control project, and is subject in any event to the approval" for "and"; substituted "for payment, has" for "therefor, shall have" in the first paragraph of subsection (b); substituted "under the agreement, including" for "thereunder including, without limitation" in the second paragraph of subsection (b); deleted "as in determination of" following "additional provisions" in the last paragraph of subsection (c); and made minor wording changes throughout the section.

§ 159C-19. Revenue refunding bonds.

(a) Each authority is authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this Chapter, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

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

(a1) The issuance of these bonds, their maturities and other details, the rights of their holders, and the rights, duties, and obligations of the authority in respect to them shall be governed by the provisions of this Chapter that relate to the issuance of bonds, to the extent appropriate, including that the bonds may have a single maturity within the limit prescribed by G.S. 159C-6.

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

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Chapter and, if sold, their proceeds may be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of the outstanding bonds. Refunding bonds may be issued, in the determination of the authority, at any time before the date of maturity or maturities or the date selected for the redemption of the bonds being refunded by them. Pending the application of the proceeds of the refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing them, to the payment of any interest on the refunding bonds and any expenses in connection with the refunding, the proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America that mature or are subject to redemption by the holder, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing on them, will be required for the purposes intended. (1975, c. 800, s. 1; 1997-463, s. 4; 2000-179, s. 9.)

Effect of Amendments. — Session Laws 2000-179, s. 9, effective July 1, 2000, designated the former last two paragraphs in subsection (a) as subsection (a1); substituted "to the extent appropriate" for "insofar as such provisions may be appropriate therefor" in the first paragraph in subsection (a1), and substituted "bonds, except that if" for "bonds; provided, however, that in the case where" in the second paragraph in subsection (a1); in subsection (b), substituted "before the date" for "not more than five years prior to the date" and substituted "that mature or are" for "which shall mature or which shall be"; and made minor wording changes throughout.

§ 159C-28. (Effective July 1, 2001) Application of the U.C.C.

Article 9 of Chapter 25 of the General Statutes applies to transactions under this Chapter. (1979, c. 109, s. 1; 2000-169, s. 42.)

For this section as in effect until July 1, 2001, see the main volume.

Effect of Amendments. — Session Laws 2000-169, s. 42, effective July 1, 2001, rewrote the section.

Chapter 159D.

The North Carolina Capital Facilities Financing Act.

Article 1.

Industrial And Pollution Control Facilities Financing.

Article 2.

Private Capital Facilities Finance Act.

Article 1.

Industrial And Pollution Control Facilities Financing.

§ 159D-1. Short title.

This Article may be referred to as "The North Carolina Industrial and Pollution Control Facilities Financing Act." (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "The North Carolina Capital Facilities Financing Act" for "The North Carolina Industrial and Pollution Control Facilities Pool Program Financing Act" as the Chapter heading, added the Article 1 designation and heading, and in the section substituted "Article" for "chapter" and deleted "Pool Program" following "Facilities."

§ 159D-2. Legislative findings and purposes.

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

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

(c) Repealed by Session Laws 2000, c. 179, s. 2, effective July 1, 2000.

(c1) Repealed by Session Laws 2000, c. 179, s. 2, effective July 1, 2000.

(d) Repealed by Session Laws 2000, c. 179, s. 2, effective July 1, 2000. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, ss. 2, 3; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "in the State" for "into [in] the State" in the last sentence in subsection (a); substituted "Article" for "Chapter" in subsection (b); and repealed subsections (c), (c1) and (d), pertaining to findings on federal government programs for pollution control, federal tax incentives for local pollution control, and the State policy with regard to a pollution control program.

§ 159D-3. Definitions.

The following terms, whenever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Agency" means the North Carolina Capital Facilities Finance Agency, an agency of the State created pursuant to G.S. 159D-38 of the North Carolina Capital Facilities Finance Act, codified as Article 2 of this Chapter.

(2) "Air pollution control facility" shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing or stabilizing plants and equipment and their appurtenances, which shall have been certified by the agency having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.
(3) "Authority" shall mean The North Carolina Industrial and Pollution Control Facilities Financing Authority, a political subdivision and body politic of the State, created pursuant to the provisions of this Article.
(4) "Bonds" shall mean revenue bonds issued under the provisions of this Article.
(5) "Cost" as applied to any project shall embrace all capital costs thereof, including the cost of construction, the cost of acquisition of all property, including rights in land and other property, both real and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all machinery and equipment, installation, start-up expenses, financing charges, interest prior to, during and for a period not exceeding one year after completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants" and legal services, other expenses necessary or incident to determining the feasibility or practicability of such project, administrative and other expenses necessary or incident to the acquisition or construction of such project and the financing of the acquisition and construction thereof, including a reserve for debt services.
(6) Repealed by Session Laws 2000, c. 179, s. 2, effective July 1, 2000.
(7) "Financing agreement" shall mean a written instrument establishing the rights and responsibilities of the agency and the operator with respect to a project financed by the issue of bonds.
(8) "Governing body" shall mean the board, commission, council or other body in which the general legislative powers of any county or other political subdivision are vested.
(9) "Obligor" shall mean collectively the operator and any others (including, but not by way of limitation, any other person, collateral device or fund that shall be obligated to pay) who or which shall be obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the agency. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Article as the obligor.
(10) "Operator" shall mean the person entitled to the use or occupancy of a project.
(11) "Political subdivision" shall mean any county, city, town, other unit of local government or any other governmental corporation, entity, authority or instrumentality of the State now or hereafter existing.
(12) "Pollution and pollutants" shall mean any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render such air or waters harmful or inimical to the public health, safety or welfare,

or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.

(13) "Project" shall mean any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project for industry which project may be any industrial or manufacturing factory, mill, assembly plant or fabricating plant, or freight terminal, or industrial research, development or laboratory facility or industrial processing facility for industrial or manufactured products, or (ii) any pollution control project for industry which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill, plant, terminal or facility described in clause (i) of this subdivision, or (iii) any combination of projects mentioned in clauses (i) and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

(14) "Revenues" shall mean, with respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived therefrom or from the financing agreement or security document in connection therewith.

(15) "Security document" shall mean a written instrument or instruments establishing the rights and responsibilities of the agency and the holders of bonds issued to finance a project, and may provide for, or be in the form of an agreement with, a trustee for the benefit of such bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the agency's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument.

(16) "Solid waste" shall mean solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.

(17) "Solid waste disposal facility" shall mean a facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.

(18) "Water pollution control facility" shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which has been certified by the entity exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, ss. 4, 4.1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, rewrote subdivision (1); in subdivision (3), deleted "which may be" following "of the State" and substituted "Article" for "Chapter and which shall have the powers and authority specified in and by this Chapter"; deleted "of an authority" following "revenue bonds" in subdivision (4); repealed subdivision (6), which defined "pool program"; substituted "agency" for "authority" in subdivisions (7), (9) and (15); substituted "entity" for "agency" in subdivisions (11) and (18); substituted "agency's" for "authority's" in subdivision (15); substituted "has been certified" for "shall have been certified" in subdivision (18); and substituted "Article" for "Chapter" throughout the section.

§ 159D-4: Repealed by Session Laws 2000-179, s. 2, effective July 1, 2000.

§ 159D-4.1. Jurisdiction of the agency.

All actions taken by counties, local officials, the Secretary of State, the State Treasurer, and other interested parties to create and organize The North Carolina Industrial Facilities and Pollution Control Financing Authority are ratified and confirmed. All duties, powers, jurisdiction, and responsibilities vested by statute or by contract in the authority are transferred to and vested in the North Carolina Capital Facilities Finance Agency, subject to the provisions of this Article. Upon this transfer, the agency is responsible for all duties and obligations of the authority entered into or incurred, by contract or otherwise, before the transfer. Particularly, the agency is responsible for all matters relating to any outstanding bonds of the authority to the same extent that the authority was responsible for them before the date of transfer. The agency for all purposes assumes the role and is the legal successor of the authority. Upon this transfer, the authority is dissolved. (2000-179, s. 2.)

Editor's Note. — Session Laws 2000-179, s. 10, made this section effective July 1, 2000.

§ 159D-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 Article, including all of the following:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
(2) To adopt an official seal and alter the same at pleasure;
(3) To maintain an office at such place or places as it may determine;
(4) To sue and be sued in its own name, plead and be impleaded;
(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
(6) To make and execute financing agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the agency under this Article;
(7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, and interests in land less than the fee thereof, for the construction, operation or maintenance of any project;
(8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
(9) To pledge or assign revenues of the agency;

(10) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the agency or from any contribution, gift or donation or other funds made available to the agency for such purpose;
(11) To fix, charge and collect revenues with respect to any project;
(12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and
(13) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted in this Article. (1977, 2nd Sess., c. 1198, s. 1; 1985, c. 723, s. 3; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "including all of the following" for "including, but without limiting the generality of the foregoing, the powers" in the introductory paragraph; substituted "granted in this Article" for "herein granted" in subdivision (13); substituted "Article" for "Chapter" twice; and substituted "agency" for "authority" throughout the section.

§ 159D-6. Bonds.

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

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which the bonds were issued, and shall be disbursed in such manner and under such restrictions, if any, as the agency may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, are less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency.

(c) The proceeds of bonds issued pursuant to this Article shall not be used to refinance the cost of a project. For the purposes of this section, a cost of a project is considered refinanced if both of the following conditions are met:

(1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.

(2) The original expenditure was paid more than 60 days before the agency took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

(d) Notwithstanding subsection (c) of this section, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the agency's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, whether or not they are incurred or paid within 60 days of the agency's action, does not include costs that are incurred incident to the commencement of the construction of a project, such as expenditures for land acquisition and site preparation. In any event, an expenditure originally paid before the agency took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may be reimbursed from bond proceeds only if the agency finds that reimbursing those costs from bond proceeds will promote the purposes of this Article.

(e) Bonds may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, the consent of the State or of any political subdivision and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things specifically required by this Article and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, designated the existing first, second and third paragraphs as present subsections (a), (b) and (e), respectively, and added subsections (c) and (d); deleted the former last sentence in the former first paragraph and deleted the former last two sentences in the former second paragraph; in subsection (e), substituted "Article" for "Chapter" three times and substituted "State or of any political subdivision" for "State or of any political subdivision or of any agency of either thereof"; substituted "agency" for "authority" throughout the section; and made minor wording changes.

§ 159D-7. Approval of project by Secretary of Commerce.

(a) Approval Required. — No bonds may be issued by the agency pursuant to this Article unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The agency shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

(b) Findings. — The Secretary shall not approve any proposed project unless the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project,

a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) is above the average weekly manufacturing wage paid in the county in which the project is to be located or (ii) is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State; and

b. That the proposed project will not have a materially adverse effect on the environment.

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In any case (whether the proposed project is an industrial or a pollution control project),

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the agency will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(c) Initial Operator. — If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(d) Public Hearing. — The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Article for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the agency intends to file an application for approval of the proposed project with the Secretary of Commerce.

(e) Certificate of Department of Environment and Natural Resources. — The Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary shall not make the findings required by subdivision (b)(2a) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the agency consents to a longer period of time.

(f) Waiver of Wage Requirement. — If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project, except that prescribed in subdivision (b)(1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed project if the Secretary has received (i) a resolution of the governing body of the county in which the proposed project is to be located requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(g) Rules. — To facilitate the Secretary's review of each proposed project, the Secretary may require the agency to obtain and submit such data and information about such project as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules as the Secretary considers reasonably necessary to implement the provisions of this section.

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

The certificate of approval shall become effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate shall expire one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Article or Chapter 159C of the General Statutes to pay all or part of the costs of the project, however, the certificate expires three years after the date of the first issuance of the bonds.

(i) Certificate Issued Under Chapter 159C Effective. — Any certificate of approval with respect to a project which has become effective pursuant to G.S. 159C-7 satisfies the requirements of this section to the extent that the findings made by the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be made by the Secretary pursuant to this section. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 6; c. 827, s. 1; 1989, c. 727, ss. 218(162), 219(39); c. 751, s. 8(30); 1991 (Reg. Sess., 1992), c. 959, s. 82; 1997-443, s. 11A.123; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, added "by Secretary of Commerce" in the catchline and rewrote the section.

§ 159D-8. Approval of bonds.

(a) No bonds may be issued by the agency pursuant to this Article unless the issuance is first approved by the Local Government Commission.

The agency shall file an application for approval of its proposed bond issue with the secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

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

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged or secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

(c) To facilitate the review of the proposed bond issue by the commission, the Secretary may require the agency to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe forms and rules that the Secretary considers reasonably necessary to implement the provisions of this section. (1977, 2nd Sess., c. 1198, s. 1; 1989, c. 751, s. 7(52); 1991 (Reg. Sess., 1992), c. 959, s. 83; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, designated the existing first and second undesignated paragraphs as present subsection (a); designated the existing third undesignated paragraph as present subsection (b); designated the existing fourth undesignated paragraph as present subsection (c); substituted "agency pursuant to this Article" for "authority" in subsection (a); substituted "that the Secretary considers" for "and regulations as he shall deem" in subsection (c); substituted "agency" for "authority" twice; and made minor wording changes.

§ 159D-9. Sale of bonds.

Bonds issued under this Article may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission determines to be for the best interests of the agency and effectuate best the purposes of this Article irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions, as long as the sale is approved by the agency and the obligor. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, inserted "issued under this Article"; substituted "determines" for "shall determine"; substituted "provisions, as long as the sale is" for "provisions provided that such sale shall be"; substituted "Article" for "Chapter"; and substituted "agency" for "authority" twice.

§ 159D-10. Location of projects.

Any project of the agency shall be located within the boundaries of the State. Bonds may not be issued to finance any project or group of projects in any county of the State unless the board of commissioners for the county in which the project is located has consented to the location of the project within the county. (1977, 2nd Sess., c. 1198, s. 1; 1993, c. 130, s. 2; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, rewrote the section.

§ 159D-11. Financing agreements.

(a) Every financing agreement shall provide that:
(1) Repealed by Session Laws 1987, c. 517, s. 7.
(2) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and interest and redemption premium, if any, and interest on the bonds issued by the agency to pay the cost of the project as they respectively become due;
(3) The obligor shall pay all costs incurred by the agency in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others;
(4) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project; and
(5) The obligor's obligation to provide for the payment of the bonds in full shall not be subject to cancellation, termination or abatement until payment of the bonds or provision for payment has been made.

(b) The financing agreement may be in the nature of:
(1) A sale and leaseback,
(2) A lease purchase,
(3) A conditional sale,
(4) An installment sale,
(5) A secured or unsecured loan,
(6) A loan and mortgage, or
(7) Another similar transaction.

(c) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor has an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision for payment has been made.

(d) The financing agreement may provide the agency with rights and remedies in the event of a default by the obligor under it including, without limitation, any one or more of the following:

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

(e) The agency's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the agency need not have any ownership or possessory interest in the project.

(f) The agency may assign all or any of its rights and remedies under the financing agreement to the trustee or bondholders under the security document.

(g) The financing agreement may contain any additional provisions the agency considers necessary or convenient to effectuate the purposes of this Article. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 7; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "for payment has been" for "therefor shall be" in subdivision (a)(5); substituted "Another" for "Other" in subdivision (b)(7); substituted "for payment has" for "therefor, shall have" in subsection (c); substituted "under it including" for "thereunder including" in subsection (d); substituted "foreclosure" for "fore-closure [sic]" in subdivision (d)(4); substituted "agency's" for "authority's" in subsection (e); in subsection (g), substituted "The financing" for "Any such financing," substituted "the agency considers necessary" for "as in the determination of the authority are necessary" and substituted "Article" for "Chapter"; substituted "agency" for "authority" throughout; and made minor wording changes.

§ 159D-12. Security documents.

(a) Bonds issued under the provisions of this Article may be secured by a security document which may be a trust instrument between the agency and a bank or trust company or individual within the State, or a bank or a trust company without the State, as trustee. Such security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

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

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

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

The agency may subordinate the bonds or its rights under the financing agreement or otherwise to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest.

Any such security document may contain such additional provisions as in the determination of the agency are necessary or convenient or effectuate the purposes of this Article. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, designated the existing first and second undesignated paragraphs as present subsection (a); designated the existing third undesignated paragraph as present subsection (b); substituted "any part necessary to provide reserves" for "such part thereof as may be necessary to provide reserves therefor, if any" in the second paragraph in subsection (a); substituted "Article" for "Chapter" throughout; substituted "agency" for "authority" throughout; and made minor wording changes.

§ 159D-13. Trust funds.

Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this Article, whether as proceeds from the sale of bonds or as revenues, are trust funds to be held and applied solely as provided in this Article. The security document may provide that any of the money may be temporarily invested and reinvested pending its disbursement in any securities and other investments as provided in such security document, and shall provide that any officer with whom, or any bank or trust company with which, the money is deposited shall act as trustee and shall hold and apply it for the purpose of this Article, subject to any regulations this Article and the security document provide. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "are trust funds" for "shall be deemed to be trust funds"; substituted "the money may be temporarily" for "such moneys may be temporarily"; substituted "the money is deposited" for "such moneys shall be deposited"; substituted "Article" for "Chapter" throughout; and made minor wording changes.

§ 159D-14. Tax exemption.

The agency is not required to pay any taxes on any project or on any other property owned by the agency under the provisions of this Article or upon the income from the property.

The interest on bonds issued by the agency is exempt from all income taxes within the State.

All projects and all transactions for them are subject to taxation to the extent they would be subject to taxation if no public body were involved with them. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, in the first paragraph, substituted "The agency is not required" for "The authority shall not be required" and substituted "from the property" for "therefrom"; in the second paragraph, substituted "the agency is exempt" for "the authority shall be exempt"; substituted "agency" for "authority" and substituted "Article" for "Chapter" throughout; and made other wording changes.

§ 159D-15. Construction contracts.

The agency may agree with the prospective operator that all contracts relating to the acquisition, construction, installation and equipping of a project shall be solicited, negotiated, awarded and executed by the prospective operator and its agents subject only to such approval by the agency as the agency may require in such agreement. Such agreement may provide that the agency may, out of the proceeds of bonds, make advances to or reimburse the operator for all or a portion of its costs incurred in connection with such contracts. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "agency" for "authority" four times.

§ 159D-16. Conflict of interest.

If any officer, commissioner or employee of the agency is interested either directly or indirectly in any contract with the agency, such interest shall be disclosed to the agency and shall be set forth in the minutes of the agency, and the officer, commissioner, employee or member having such interest shall not participate on behalf of the agency in the authorization of the project. This section does not apply to the ownership of less than one percent (1%) of the stock of any operator or obligor. Failure to take any or all actions necessary to carry out the purposes of this section does not affect the validity of bonds issued pursuant to the provisions of this Article. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "the project. This section does not apply" for "any such contract; provided, however, that this section shall not apply"; substituted "one percent" for "one per centum"; substituted "Article" for "Chapter"; substituted "agency" for "authority" throughout; and made minor wording changes.

§ 159D-17. Credit of State not pledged.

Bonds issued under the provisions of this Article do not constitute a debt of the State or any political subdivision or a pledge of the faith and credit of the State or any political subdivisions, but shall be payable solely from the revenues and other funds provided for payment. Each bond issued under this Chapter shall contain on its face a statement to the effect that the agency shall not be obligated to pay the bonds or the interest on it except from the revenues and other funds pledged for payment and that neither the faith and credit nor the taxing power of the State or any political subdivision is pledged to the payment of the principal of or the interest on the bonds. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "this Article do not constitute" for "this Chapter shall not be deemed to constitute"; deleted "or any agency thereof" following the first instance of "any political subdivision"; substituted "political subdivisions" for "political subdivision or any such agency"; substituted "funds provided for payment" for "funds provided therefor"; substituted "on its face a statement" for "on the face thereof"; substituted "agency" for "authority"; substituted "bonds or the interest on it" for "same or the interest thereon"; substituted "funds pledged for payment" for "funds pledged therefor"; deleted "or any agency thereof" following the last instance of "political subdivision" and substituted "the bonds" for "such bonds" at the end.

§ 159D-18. Bonds eligible for investment.

Bonds issued by the agency under the provisions of this Article are securities in which all public officers and agencies of the State and all political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. (1977, 2nd Sess., c. 1198, s. 1.; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "Bonds issued by the agency" for "Bonds issued by an authority"; substituted "Article are securities" for "Chapter are hereby made securities" and made a minor wording change.

§ 159D-19. Revenue refunding bonds.

(a) The agency is authorized to provide by resolution for the issuance of refunding bonds of the agency for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this Article, or under the provisions of Chapter 159C of the General Statutes, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of such bonds, and, if considered advisable by the agency, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued; and

(2) Paying all or any part of the cost of any additional project or projects.

(a1) The issuance of bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the agency in respect to the bonds are governed by the provisions of this Article that relate to the issuance of bonds.

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

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Article and, if sold, the proceeds may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Refunding bonds may be issued, in the determination of the agency, at any time not more than five years prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing the bonds to the payment of any interest on such refunding bonds, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America if these obligations mature or are subject to redemption by the holder, at the holder's option not later than the respective dates when the proceeds, together with the interest accruing on them will be required for the purposes intended. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 8; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, designated the former second and third paragraphs in subsection (a) as present subsection (a1); substituted "if considered advisable" for "if deemed advisable" in subsection (a); deleted "insofar as such provisions may be appropriate therefor" at the end of subsection (a1); in subsection (b) substituted "if these obligations mature or are subject" for "which shall mature or which shall be subject" and substituted "holder, at the holder's option" for "holder thereof, at the option of such holder"; substituted "Article" for "Chapter" and "agency" for "authority" throughout; and made minor wording changes.

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

The agency shall not have any right or power to acquire any property through the exercise of eminent domain or any proceedings in the nature of eminent domain. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "agency" for "authority."

§ 159D-21: Repealed by Session Laws 2000-179, s. 2, effective July 1, 2000.

§ 159D-22: Repealed by Session Laws 2000-179, s. 2, effective July 1, 2000.

§ 159D-23. (Effective until July 1, 2001) Application of Article 9 of Chapter 25.

The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of North Carolina Uniform Commercial Code apply to transactions under this Article to the same extent as if G.S. 25-9-104(e) and G.S. 25-9-302(6) were repealed. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Section Set Out Twice. — The section above is effective until July 1, 2001. For the section as amended July 1, 2001, see the following section, also numbered § 159D-23.

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, inserted the second instance of "G.S."; substituted "Code apply to transactions under this Article" for "Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply [to] transactions under this Chapter"; and substituted "as if G.S. 25-9-104(e) and G.S. 25-9-302(6) were repealed" for "the provisions of such Article 9 would apply were G.S. 25-9-104(e) and 25-9-302(6) hereby repealed."

§ 159D-23 is set out twice. See notes.

§ 159D-23. (Effective July 1, 2001) Application of Article 9 of Chapter 25.

Article 9 of Chapter 25 of the General Statutes applies to transactions under this Chapter.

G.S. Article as if G.S. were (1977, 2nd Sess., c. 1198, s. 1; 2000-169, s. 43; 2000-179, s. 2.)

Section Set Out Twice. — The section above is effective July 1, 2001. For the section as in effect until July 1, 2001, see the previous section, also numbered § 159D-23.

Editor's Note. — This section was amended by Session Laws 2000-169, s. 43 in the coded bill drafting format provided by § 120-20.1. The amendment inadvertently retained language that had been added by Session Laws 2000-179, s. 2. This section has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2000-169, s. 43, effective July 1, 2001, rewrote the section.

§ 159D-24. Officers not liable.

No member of the Board of Directors of the agency shall be subject to any personal liability or accountability by reason of the issuance or execution of any bonds. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "member of the Board of Directors of the agency" for "commissioner of any authority"; substituted "the issuance or execution" for "his execution"; and deleted "or the issuance thereof" following "of any bonds."

§ 159D-25. Additional method.

The foregoing sections of this Article provide an additional and alternative method for the doing of the things authorized and are supplemental and additional to powers conferred by other laws. They do not derogate any other powers. The issuance of bonds or refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, deleted "shall be deemed to" following the first instance of "Article"; substituted "authorized and are supplemental" for "authorized thereby and shall be regarded as supplemental"; substituted "other laws. They do not derogate any other powers. The issuance" for "other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance"; and substituted "Article" for "Chapter" twice.

§ 159D-26. Liberal construction.

This Article, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect its purposes. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "Article" for "Chapter" and substituted "its purposes" for "the purposes hereof."

§ 159D-27. Inconsistent laws inapplicable.

Insofar as the provisions of this Article are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this Article shall be controlling. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "Article" for "Chapter" twice.

§§ 159D-28 through 159D-34: Reserved for future codification purposes.

ARTICLE 2.

Private Capital Facilities Finance Act.

§ 159D-35. Short title.

This Article shall be known, and may be cited, as the "Private Capital Facilities Finance Act." (1985 (Reg. Sess., 1986), c. 794, s. 1; 1998-124, s. 2; 2000-179, s. 2.)

Editor's Note. —
This Article is Chapter 115E as rewritten by Session Laws 2000-179, s. 2, and recodified as Article 2 of Chapter 159D. The historical citations to the sections in the former Chapter have been retained in corresponding sections in the Article as rewritten and recodified.

Effect of Amendments. —
Session Laws 2000-179, s. 2, effective July 1, 2000, rewrote the former Chapter 115E heading as the Chapter 159D, Article 2, heading; and in the section substituted "Article" for "Chapter" and substituted "Capital" for "Educational."

§ 159D-36. Legislative findings.

It is declared that for the benefit of the people of the State of North Carolina, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions for higher education and institutions for elementary and secondary education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this Article to provide a measure of assistance and an alternative method to enable private institutions for higher education and institutions for elementary and secondary education in the State to provide the facilities and the structures that are needed to accomplish the purposes of this Article, all to the public benefit and good, to the extent and in the manner provided in this Article.

It is further declared that this purpose will benefit the people as a way to improve student learning, increase learning opportunities for all students, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and students with expanded choices in the types of educational opportunities that are available, and lower the overall cost of education to the State and to parents and students.

The General Assembly also finds that the private sector often provides services and opportunities to the people of the State of North Carolina in activities that constitute a public purpose, and that these activities by the private sector are to be fostered and encouraged. The people of the State of North Carolina will benefit from the enactment of laws and creation of programs that assist the private sector in obtaining financing for capital improvements of facilities that will be used in conducting these activities. (1985 (Reg. Sess., 1986), c. 794, s. 2; 1998-124, s. 3; 2000-179, s. 2.)

Effect of Amendments. —
Session Laws 2000-179, s. 2, effective July 1, 2000, in the first paragraph, deleted "hereby" following "It is," substituted "Article" for "Chapter" twice, substituted "in this Article" for "herein" at the end; deleted "hereby" following "It is" in the second paragraph; and added the third paragraph.

§ 159D-37. Definitions.

As used or referred to in this Article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Agency" means the North Carolina Capital Facilities Finance Agency or, should this agency be abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Article to the agency.

(1a) "Bonds" or "notes" means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Article, including revenue refunding bonds, notwithstanding that they may be secured by a deed of trust or the full faith and credit of a participating institution or any other lawfully pledged security of a participating institution.

(2) "Cost", as applied to any project or any portion of a project financed under the provisions of this Article, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the agency, 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 equipping a project, the cost of administrative and other expenses necessary or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service, and the cost of reimbursing any participating institution for any payments made for any cost described above or the refinancing of any cost described above, including any evidence of indebtedness incurred to finance such cost; provided, however, that no payment shall be reimbursed or any cost or indebtedness be refinanced if such payment was made or such cost or indebtedness was incurred before November 25, 1981.

(3) Repealed by Session Laws 2000, c. 179. s. 2, effective July 1, 2000.

(4) Repealed by Session Laws 2000, c. 179. s. 2, effective July 1, 2000.

(4a) "Institution for elementary and secondary education" means a nonprofit institution within the State of North Carolina authorized by law and engaged or to be engaged in the providing of kindergarten, elementary, or secondary education, or any combination of these.

(5) "Institution for higher education" means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.

(6) "Participating institution" means an institution for higher education, an institution for elementary and secondary education, or a special purpose institution that, pursuant to the provisions of this Article, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, renovating, or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in this Article.

(6a) "Project" means any one or more buildings, structures, equipment, improvements, additions, extensions, enlargements, or other facilities comprising any of the following:

a. Educational facilities used by an institution for higher education or an institution for elementary and secondary education, including dormitories and other housing facilities, housing facilities for student nurses, dining halls and other food preparation and food service facilities, student unions, administration buildings, academic buildings, libraries, laboratories, research facilities, classrooms, athletic facilities, health care facilities, laundry facilities, and other structures or facilities related to these facilities or required or useful for the instruction of students, the conducting of research, or the operation of the institution.

b. Student housing facilities to be owned or operated by an owner or operator other than an institution for higher education or an institution for elementary and secondary education.

c. A special purpose project as defined in G.S. 159C-3.

The term "project" also includes landscaping, site preparation, furniture, equipment and machinery, and other similar items necessary or convenient for operation of a particular facility, building, or structure in the manner for which its use is intended, and maintenance, storage, or utility facilities and other structures or facilities related to, required, or useful for the operation of the facilities, including parking and other facilities or structures essential or convenient for the orderly conduct of the facility. The term "project" does not include such items as books, fuel, or supplies or other items the costs of which customarily result in a current operating charge. The term does not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility that is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(6b) "Special purpose institution" means a for-profit or not-for-profit corporation or similar entity that undertakes any of the activities set forth in sub-subdivisions (6a)b. and (6a)c. of this section.

(7) "State" means the State of North Carolina. (1985 (Reg. Sess., 1986), c. 794, s. 3; 1998-124, s. 4; 2000-179, s. 2.)

Effect of Amendments. —

Session Laws 2000-179, s. 2, effective July 1, 2000, in subdivision (1), substituted "Capital" for "Educational" and deleted "created by this Chapter" following "Finance Agency"; added subdivision (1a); substituted "of a project financed" for "thereof financed" in subdivision (2); repealed subdivision (3) regarding the definition of "Project"; repealed subdivision (4) regarding the definition of "Bonds or notes"; inserted "or a special purpose institution" in subdivision (6); added subdivisions (6a) and

(6b); and throughout the section, substituted "Article" for "Chapter" and made minor wording and punctuation changes.

§ 159D-38. Capital facilities finance agency.

(a) There is created a body politic and corporate to be known as "North Carolina Capital Facilities 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 seven members. Two of the members of the board shall be the State Treasurer and the State Auditor, both of whom shall serve ex officio. The remaining directors of the agency shall be residents of the State and shall not hold other public office. The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint one director in accordance with G.S. 120-121, the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint one director in accordance with G.S. 120-121, and the Governor shall appoint three directors of the agency. The five appointive directors of the agency shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and the Speaker of the House, respectively, and one for two years, one for three years and one for four years, respectively, as designated by the Governor. Each director shall continue in office until a successor is duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any vacancy in a position held by an appointive member shall be filled by a new appointment made by the officer who originally made the appointment. Any member of the board of directors is eligible for reappointment. Each appointive 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 notice and hearing are in writing expressly waived. Each appointive member of the board of directors shall take an oath of office to administer the duties of office faithfully and impartially and a record of the oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the board of directors a chair and a vice-chair, whose terms 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 board of directors shall elect and appoint and prescribe the duties of a secretary-treasurer and any other officers it considers necessary or advisable, which officers need not be members of the board of directors.

(b) 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, 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.

(c) The secretary-treasurer 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. The secretary-treasurer 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.

(d) Four 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. The board of directors may, however, appoint an executive committee to act on behalf of the 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 impairs the rights of a quorum to exercise all the rights and to perform all the duties of the agency.

(e) The North Carolina Capital Facilities Finance Agency shall be contained within the Department of State Treasurer as if it had been transferred to that department by a Type II transfer as defined in G.S. 143A-6(b). (1985 (Reg. Sess., 1986), c. 794, s. 4; 1995, c. 490, s. 17(a); 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "Capital" for "Educational" in the catchline and twice in the section; substituted "The secretary-treasurer shall have" for "He shall have" in subsection (c); substituted "of the agency. The board of directors may, however, appoint" for "of the agency; provided, however, that the board of directors may appoint" in subsection (d); and throughout the section, made minor wording, punctuation and stylistic changes.

§ 159D-39. General powers.

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including all of the following:

(1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Article, including loan agreements and agreements of sale or leases with, mortgages and deeds of trust and conveyances to participating institutions, persons, firms, corporations, governmental agencies and others and including credit enhancement agreements.

(2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any project, upon such terms and at such cost as shall be agreed upon by the owner and the agency.

(3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any project.

(4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a deed of trust in, or otherwise dispose of, or to grant options for these purposes with respect to, any real or personal property or interest in property.

(5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed securities and moneys received from them whether the securities are initially acquired by the agency or a participating institution, and any proceeds derived by the agency from sales of property, insurance, condemnation awards or other sources.

(6) To pledge or assign the revenues and receipts from any project and from any loan agreement, agreement of sale, or lease, including any loan repayments, purchase price payments, rent, or other income received under a loan agreement, agreement of sale, or lease.

(7) To borrow money as provided in this Article to carry out and effectuate its corporate purposes and to issue bonds and notes for the purpose of

providing funds to pay all or any part of the cost of any project, to lend money to any participating institution for the acquisition of any federally guaranteed securities, and to issue revenue refunding bonds.

(8) To finance, refinance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any project and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the agency for this purpose.

(9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, rates and charges for the use of, or services rendered by, any project.

(10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and any 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.

(11) To conduct studies and surveys respecting the need for projects and their location, financing and construction.

(12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or instrumentalities.

(13) To sue and be sued in its own name, plead and be impleaded.

(14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use the federally guaranteed security or federally insured mortgage note as the agency considers in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any participating institution to finance or refinance the cost of any project.

(15) To make loans to any participating institution for the cost of a project in accordance with an agreement between the agency and the participating institution.

(16) To make loans to a participating institution to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by the participating institutions for the cost of a project.

(17) To charge and to apportion among participating institutions its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this Article.

(18) To adopt an official seal and alter it at pleasure.

(19) To do all other things necessary or convenient to carry out the purposes of this Article. (1985 (Reg. Sess., 1986), c. 794, s. 5; 1998-124, s. 5; 2000-179, s. 2.)

Effect of Amendments. —
Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "including all of the following" for "including, but without limiting the generality of the foregoing, the power" in the introductory paragraph; in subdivision (4), substituted "these purposes" for "any such purposes" and substituted "in property" for "therein"; in subdivision (6), substituted "lease, including any loan" for "lease of the loan" and substituted "under a loan agreement, agreement of sale, or lease" for "thereunder"; in subdivision (7), inserted "in this Article" and deleted "in evidence thereof" following "purposes and to issue"; substituted "as the agency considers" for "in such manner as the agency deems" in subdivision (14); substituted "it at pleasure" for "the same at pleasure; and" in subdivision (18); and throughout the section, substituted "Article" for "Chapter" and made minor stylistic, wording and punctuation changes.

§ 159D-40. Criteria and requirements.

(a) In undertaking any project pursuant to this Article, the agency shall be guided by and shall observe the following criteria and requirements listed below. The determination of the agency as to its compliance with these criteria and requirements is conclusive.

(1) No project shall be sold or leased nor any loan made to any participating institution that is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make purchase price payments, to pay rent, to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge any other responsibilities imposed under the agreement of sale or lease or loan agreement.

(2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves for payment and for the operation, repair and maintenance of the project at the expense of the participating institution.

(3) The public facilities, including utilities, and public services necessary for the project will be made available.

(4) The projects shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, color, or national origin.

(b) In making these determinations, the agency may consider the participating institution's experience and ratio of current assets to current liabilities; the participating institution's net worth, earnings trends, and coverage of fixed charges; the nature of the project involved; and any additional security for payment of the bonds and performance of the participating institution's obligations under the agreement of sale or lease or loan agreement, such as credit enhancement, insurance, guaranties, or property pledged to secure the payment and performance. (1985 (Reg. Sess., 1986), c. 794, s. 6; 1998-124, s. 6; 2000-179, s. 2.)

Effect of Amendments. —

Session Laws 2000-179, s. 2, effective July 1, 2000, added subsection (b), and designated the existing provisions as subsection (a); in subdivision (a)(1), substituted "participating institution" for "institution for higher education or any institution for elementary and secondary education"; and made stylistic changes throughout.

§ 159D-41. Procedural requirements.

Any participating institution may submit to the agency, and the agency may consider, a proposal for financing a project using forms and following instructions prescribed by the agency. The proposal shall set forth the type and location of the project and may include other information and data respecting the project and the extent to which the project conforms to the criteria and requirements set forth in this Article. The agency may request the applicant to provide additional information and data respecting the project. The agency is authorized to make or cause to be made any investigation, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project will contribute to the health and welfare of the area in which it will be located, the powers, experience, background, financial condition, record of service and capability of the management of the applicant, the extent to which the project otherwise conforms to the criteria and requirements of this Article, and any other factors the agency considers relevant or convenient in carrying out the purposes of this Article. (1985 (Reg. Sess., 1986), c. 794, s. 7; 1998-124, s. 7; 2000-179, s. 2.)

Effect of Amendments. —
Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "participating institution" for "institution for higher education or any institution for elementary and secondary education"; deleted "available to the institution for higher education or the institution for elementary and secondary education" following "other information and data"; substituted "the applicant" for "the institution for higher education or the institution for elementary and secondary education" twice; substituted "the agency considers" for "as may be deemed"; and throughout the section, substituted "Article" for "Chapter" and made minor wording changes.

§ 159D-42. Operations of projects; agreements of sale on leases; conveyance of interest in projects.

(a) The agency may sell or lease any project to a participating institution for operation and maintenance or lend money to any participating institution to effectuate the purposes of this Article, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent with this Article. The loan agreement or agreement of sale or lease may include provisions that:

(1) The participating institution shall, at its own expense, operate, repair and maintain the project covered by the agreement.

(2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the agency to pay the cost of the project sold or leased or with respect to which the loan was made.

(3) The participating institution shall pay all other costs incurred by the agency in connection with the providing of the project covered by any agreement, except costs paid out of the proceeds of bonds or notes or otherwise, including insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants, and others.

(4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all bonds and all other obligations incurred by the agency in connection with the project covered by the agreement are retired or provision for their retirement is made.

(5) The obligation of the participating institution to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the participating institution until the bonds have been retired or provision has been made for their retirement.

(b) If the agency has acquired a possessory or ownership interest in any project it has undertaken on behalf of a participating institution, it shall promptly convey, without the payment of any consideration, all its right, title and interest in the project to that participating institution upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with that project. (1985 (Reg. Sess., 1986), c. 794, s. 8; 1998-124, s. 8; 2000-179, s. 2.)

Effect of Amendments. —
Session Laws 2000-179, s. 2, effective July 1, 2000, added the subsection (a) and (b) designations; in subsection (a) substituted "Article" for "Chapter"; in subdivision (a)(3) deleted "but without limitation" preceding "insurance costs"; and made stylistic changes.

§ 159D-43. Construction contracts.

If the agency determines that the purposes of this Article will be more effectively served, the agency in its discretion may award or cause to be awarded contracts for the construction of any project on behalf of a participating institution upon a negotiated basis as determined by the agency. The agency shall prescribe any bid security requirements and other procedures in connection with the award of the contracts as in its judgment will protect the public interest. The agency may by written contract engage the services of the participating institution in the construction of the project and may provide in the contract that the participating institution, subject to any conditions and requirements consistent with the provisions of this Article prescribed in the contract, may act as an agent of, or an independent contractor for, the agency for the performance of the functions described in the contract including the acquisition of the site and other real property for the project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of the project directly by the participating institution, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost of these functions pending reimbursement by the agency. The contract may provide that the agency may, out of proceeds of bonds or notes, make advances to or reimburse the participating institution for its costs incurred in the performance of these functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that are required in connection to assure compliance with the provisions of this Article and the contract. (1985 (Reg. Sess., 1986), c. 794, s. 9; 1998-124, s. 9; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "Article" for "Chapter" three times and made minor wording changes throughout the section.

§ 159D-44. Credit of State not pledged.

Bonds or notes issued under the provisions of this Article shall not be secured by a pledge of the faith and credit of the State or of any political subdivision of the State, or create an indebtedness of the State, or of any political subdivision of the State requiring any voter approval, but shall be payable solely from the revenues and other funds provided for payment. Each bond or note issued under this Article shall contain on its face a statement to the effect that the agency is not obligated to pay it nor the interest on it except from the revenues and other funds pledged for its payment and that neither the faith and credit nor the taxing power of the State or of any political subdivision of the State is pledged as security for the payment of the principal of or the interest on the bond or note.

Expenses incurred by the agency in carrying out the provisions of this Article may be made payable from funds provided pursuant to, or made available for use under, this Article and no liability shall be incurred by the agency under this Article beyond the extent to which moneys have been so provided. (1985 (Reg. Sess., 1986), c. 794, s. 10; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "Article" for "Chapter" four times; substituted "for payment" for "therefor"; substituted "under this Article" for "hereunder" and made minor wording changes throughout the section.

§ 159D-45. Bonds and notes.

(a) The agency is authorized to provide for the issuance, at one time or from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the agency to carry out and effectuate its corporate purposes. The principal of and the interest on such bonds or notes shall be payable solely from funds provided under this Article for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or other funds provided therefor. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the agency at such price or prices and upon such terms and conditions as may be determined by the agency. The bonds may also be made payable from time to time on demand or tender for purchase by the owner upon such terms and conditions as may be determined by the agency. Any such bonds or notes shall bear interest at such rate or rates (including variable rates) as may be determined by the Local Government Commission with the approval of the agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the agency. The agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or notes or coupons attached to them ceases to be that officer before their delivery, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until 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. No bonds or notes may be issued by the agency under this Article unless the issuance thereof is approved by the Local Government Commission.

(b) The agency shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes. The application must include any information and documents concerning the proposed financing and prospective borrower, vendee or lessee required by the Secretary.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, in addition to the criteria and requirements in this Article, the effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of the bonds or notes if, upon the information and evidence it receives, it finds that the proposed financing will effectuate the purposes of this Article.

Upon the filing with the Local Government Commission of a resolution of the agency requesting that its bonds or notes be sold, the bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission determines to be for the best interests of the agency and to effectuate best the purposes of this Article, as long as the sale is approved by the agency.

(c) 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, or any trust agreement securing, the bonds or notes.

(d) 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 the bonds have been executed and are available for delivery. The agency may also provide for the replacement of any bonds or notes which become mutilated or are destroyed or lost.

(e) Bonds or notes may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, 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 specifically required by this Article and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(f) Before the issuance of bonds pursuant to this Article to finance a project, the Agency shall hold a public hearing with respect to the proposed project and the issuance of the bonds to finance the proposed project. The public hearing may be held at any location designated by the Agency, including at the offices of the Agency in Raleigh, North Carolina.

The public hearing may be conducted by the Agency or by a hearing officer designated by the Agency to conduct public hearings. Notice of the public hearing must be published at least once in at least one newspaper of general circulation in the county where the proposed project is to be located not less than 14 days before the public hearing. The notice must describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the Agency considers appropriate. A copy of the notice of public hearing must be mailed to the clerk of the Board of Commissioners of the county in which the proposed project is to be located and to the governing body of any city or town in which the proposed project is to be operated. (1985 (Reg. Sess., 1986), c. 794, s. 11; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, added subsection (f); substituted "Article" for 'Chapter" throughout; and made wording and stylistic changes.

§ 159D-46. Trust agreement or resolution.

In the discretion of the agency any bonds or notes issued under the provisions of this Article may be secured by a trust agreement by and between the agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution authorizing the issuance of such bonds or notes may pledge or assign all or any part of the revenues of the agency received pursuant to this Article, including, without limitation, fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project and may grant a deed of trust or a mortgage on any project. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the purposes to which bond or note proceeds may be applied, the disposition or pledging of the revenues of the agency, including any payments in respect of any federally guaranteed security or any federally insured mortgage note, the duties of the agency with respect to the acquisition, construction, maintenance, repair and operation of any project, the fees, loan repayments, purchase price payments, rents and charges to be fixed and collected in connection therewith, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding and application of all moneys. All bonds issued under this Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in such trust agreement or resolution, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this Article and of such trust agreement or resolution; except that the agency may provide in such trust agreement or resolution that bonds issued pursuant thereto shall to the extent and in the manner prescribed in such trust agreement or resolution be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other bonds. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or notes, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the agency. Any such trust agreement or resolution may set off the rights and remedies, including foreclosure of any deed of trust or mortgage, of the holders of any bonds or notes and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the agency considers reasonable and proper for the security of the holders of any bonds or notes. Expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of any project or paid from the revenues pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the agency. (1985 (Reg. Sess., 1986), c. 794, s. 12; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "considers reasonable and proper" for "may deem reasonable and proper" near the end and substituted "Article" for "Chapter" throughout the section.

§ 159D-47. Revenues; pledges of revenues.

(a) The agency is authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any project, and any part or section of the project and to contract with any participating institution for its use. The agency may require that the participating institution operate, repair or maintain such project and bear the cost and other costs of the agency in connection with the project all as may be provided in the agreement of sale or lease, loan agreement or other contract with the agency, in addition to other obligations imposed under the agreement or contract.

(b) The fees, loan repayments, purchase price payments, rents and charges shall be fixed so as to provide a fund sufficient, with any other available funds, (i) to pay the costs of operating, repairing and maintaining the project to the extent that adequate provision for the payment of such costs has not otherwise been provided for, (ii) to pay the principal of and the interest on all bonds or notes as they become due and payable and (iii) to create and maintain any reserves provided for in the resolution authorizing the issuance of, or any trust agreement securing, the bonds. The fees, loan repayments, purchase price payments, rents and charges may be applied or pledged to the payment of debt service on the bonds prior to the payment of the costs of operating, repairing and maintaining the project.

(c) All pledges of fees, loan repayments, purchase price payments, rents, charges and other revenues under the provisions of this Article are valid and binding from the time when they are made. All revenues so pledged and thereafter received by the agency are immediately subject to the lien of the pledge without any physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether the parties have notice of it. The resolution or any trust agreement by which a pledge is created or any loan agreement, agreement of sale or lease need not be filed or recorded except in the records of the agency.

(d) The State of North Carolina pledges to and agrees with the holders of any bonds or notes issued by the agency that so long as any of the bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the agency at the time of issuance of the bonds or notes to fix, revise, charge, and collect or cause to be fixed, revised, charged and collected loan repayments, purchase price payments, rents, fees and charges for the use of or services rendered by any project in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with any other available funds to pay the costs of operating, repairing and maintaining the project, to pay the principal of and the interest on all bonds and notes as they become due and payable, to create and maintain any reserves provided for their payment, and to fulfill the terms of any agreements made with the bondholders or noteholders. The State will not in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met and discharged. (1985 (Reg. Sess., 1986), c. 794, s. 13; 1998-124, s. 10; 2000-179, s. 2.)

Effect of Amendments. —
Session Laws 2000-179, s. 2, effective July 1, 2000, in subsection (a), substituted "of the project" for "thereof" and substituted "with the project" for "therewith"; in subsection (b), substituted "any other available funds" for "such other funds as may be made available therefor" and substituted "the bonds. The fees" for "such bonds; and such fees"; in subsection (d), substituted "pledges to and agrees" for "does pledge to and agree," substituted "any other available funds" for "such other funds as may be made available therefor," substituted "for their payment" for "therefor" and substituted "noteholders. The State will not" for "noteholders, nor will the State"; and throughout the section, substituted "Article" for "Chapter" and made minor wording changes.

§ 159D-48. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Article, including fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project, are trust funds to be held and applied solely as provided in this Article. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of these moneys may be temporarily invested pending their disbursement and shall provide that any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as trustee of such moneys and shall hold and apply them for the purposes of this Article, subject to any limitations provided in this Article and in the resolution or trust agreement. The moneys may be invested as provided in G.S. 159-30, as it may from time to time be amended. (1985 (Reg. Sess., 1986), c. 794, s. 14; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, deleted "without limitation" following "of this Article, including" and throughout the section, substituted "Article" for "Chapter" and made minor stylistic and wording changes.

§ 159D-49. Remedies.

Any holder of bonds or notes issued under the provisions of this Article or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the agency pursuant to this Article, and may enforce and compel the performance of all duties required by this Article or by such trust agreement or resolution to be performed by the agency or by any officer of the agency. (1985 (Reg. Sess., 1986), c. 794, s. 15; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "of the agency" for "thereof" and substituted "Article" for "Chapter" three times.

§ 159D-50. Investment securities.

All bonds, notes and interest coupons issued under this Article are investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, whether or not they are of such form and character as to be investment securities under that Article, subject only to the provisions of the bonds and notes pertaining to registration. (1985 (Reg. Sess., 1986), c. 794, s. 16; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, deleted "appertaining thereto" following "interest coupons"; substituted "Article are investment" for "Chapter are herby made investment"; and substituted "that Article" for "said Article 8."

§ 159D-51. Bonds or notes eligible for investment.

Bonds or notes issued under the provisions of this Article are securities in which all public officers and public bodies of the State and its political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds or notes are securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of this State is authorized by law. (1985 (Reg. Sess., 1986), c. 794, s. 17; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "this Article are securities" for "this Chapter are hereby made securities"; deleted "now or may hereafter be" following "obligations of this State is" near the end; and made minor wording changes throughout.

§ 159D-52. Refunding bonds or notes.

(a) The agency is authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes then outstanding which have been issued under the provisions of this Article, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the bonds or notes and, if considered advisable by the agency, for any corporate purpose of the agency, including, without limitation:

(1) Constructing improvements, additions, extensions or enlargements of the project in connection with which the bonds or notes to be refunded shall have been issued, and

(2) Paying all or any part of the cost of any additional project.

(b) The issuance of refunding bonds or notes, their maturities and other details the rights of their holders, and the rights, duties and obligations of the agency are governed by the provisions of this Article which relate to the issuance of bonds or notes, as appropriate.

Refunding bonds may be sold or exchanged for outstanding bonds issued under this Article and, if sold, their proceeds, and investment earnings on them, may be applied, with any other available funds, to the purchase, redemption, or payment of the bonds being refunded, to the payment of any interest on the refunding bonds, and to the payment of any expenses in connection with the refunding. The proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America if the obligations mature or are subject to redemption by the holders, at their option not later than the respective dates when the proceeds, together with the interest accrued thereon, will be required for the purposes intended. (1985 (Reg. Sess., 1986), c. 794, s. 18; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, rewrote the section.

§ 159D-53. Annual report.

The agency shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Article for the preceding year to the Governor, the State Auditor, the General Assembly, the Advisory Budget Commission and the Local Government Commission. The agency shall cause an audit of its books and accounts relating to its activities under this Article to be made at least once in each year by an independent certified public accountant and the cost of the audit may be paid from any available moneys of the agency. (1985 (Reg. Sess., 1986), c. 794, s. 19; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "Article" for "Chapter" twice and substituted "of the audit" for "thereof."

§ 159D-54. Officers not liable.

No member or officer of the agency shall be subject to any personal liability or accountability by reason of the issuance or execution of any bonds or notes. (1985 (Reg. Sess., 1986), c. 794, s. 20; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "the issuance or execution" for "his execution" and deleted "or the issuance thereof" following "bonds or notes."

§ 159D-55. Tax exemption.

The exercise of the powers granted by this Article will be in all respects for the benefit of the people of the State and will promote their health and welfare.

Any bonds or notes issued by the agency under the provisions of this Article are at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1985 (Reg. Sess., 1986), c. 794, s. 21; 1995, c. 46, s. 5; 2000-179, s. 2.)

Editor's Note. — The amendments to G.S. 159D-55, as recodified by this act, become effective with respect to obligations issued on or after August 1, 2000. The remainder of this act becomes effective July 1, 2000.

Effect of Amendments. — Session Laws 2000-179, s. 2, effective with respect to obligations issued on or after August 1, 2000, rewrote the first paragraph and substituted "Article are" for "Chapter shall" in the second paragraph.

§ 159D-56. Conflict of interest.

If any member, officer or employee of the agency is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the agency, this interest shall be disclosed to the agency and shall be set forth in the minutes of the agency, and the member, officer or employee having an interest in a contract shall not participate on behalf of the agency in the authorization of the contract. (1985 (Reg. Sess., 1986), c. 794, s. 22; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted "interest in a contract" for "interest therein" and made minor wording changes throughout.

§ 159D-57. Additional method.

The foregoing sections of this Article provide an additional and alternative method for the doing of the things authorized and are supplemental and additional to powers conferred by other laws. This Article does not derogate any existing powers. The issuance of bonds or notes under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1985 (Reg. Sess., 1986), c. 794, s. 23; 2000-179, s. 2.)

Effect of Amendments. — Session Laws 2000-179, s. 2, effective July 1, 2000, substituted the first instance of "Article" for "Chapter shall be deemed to"; substituted "and are supplemental" for "thereby and shall be regarded as supplemental"; substituted "other laws. This Article does not derogate any existing powers. The issuance" for "other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance" and substituted "Article" for "Chapter."

Chapter 159G.

North Carolina Clean Water Revolving Loan and Grant Act of 1987.

§ 159G-6. Distribution of funds.

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to applicants for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one applicant during any fiscal year shall be eight million dollars ($8,000,000).

(2a) The maximum principal amount of grants made to any applicant over a period of three fiscal years shall be three million dollars ($3,000,000). The Department of Environment and Natural Resources may limit the maximum principal amount of a grant under this subdivision to two million dollars ($2,000,000) or two-thirds of the eligible project cost, whichever is less, when the bond rating of the local government unit equals or is greater than 75 during any fiscal year and when one million dollars ($1,000,000) or one-third of the eligible project cost, whichever is less, is available to the local government unit as a loan from any source.

(2b) Notwithstanding G.S. 159G-6(a)(2a), the maximum principal amount of grants made to any applicant for a high-unit cost wastewater project under G.S. 159G-6(b)(2) during any fiscal year shall be three million dollars ($3,000,000) if the applicant is a sewer district that includes three or more local government units. Notwithstanding G.S. 159G-6(a)(2a), the maximum principal amount of grants made to any applicant for a high-unit cost water supply system under G.S. 159G-6(c)(2) during any fiscal year shall be three million dollars ($3,000,000) if the applicant is either: (i) a water district that includes three or more local government units, or (ii) a county in which less than fifty percent (50%) of the population of the county is served by a public water system that is owned or operated by a local government unit or a nonprofit water corporation.

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to an applicant to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the applicant to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. — The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. — The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. — The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subdivision (a)(2) of this section. However, if the applicant upon completion of the project will have only a single utility service, then the eligibility of the applicant for such a grant shall be determined by comparing estimated average household user fees for the single utility service that will be offered, for debt service and operation and maintenance costs, to three-fourths percent (3/4%) of the median household income in the local government unit in which the project is located. The single utility projects which would require estimated average household water or sewer user fees (as appropriate) greater than three-fourths percent (3/4%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subdivision (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. — The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. — The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to applicants as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. — The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. — The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. — The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder. (1987, c. 796, s. 1; 1989, c. 727, s. 207; c. 770, s. 36; 1991, c. 186, s. 4; 1993, s. 542, s. 12(b); 1997-443, s. 11A.123; 1998-132, s. 15; 1998-212, s. 14.19(b); 1999-213, s. 4; 1999-329, s. 12.2; 2000-156, s. 3.)

Effect of Amendments. —
Session Laws 2000-156, s. 3, effective retroactively to July 1, 1999, and applicable to grants made on or after August 2, 2000, in subdivision (a)(2a), substituted "over a period of three fiscal years" for "during any fiscal year" and substituted "a grant under this subdivision" for "the grant"; and added subdivision (a)(2b).

§ 159G-10. Priorities.

(a) Determination. — Determination of priorities to be assigned each eligible application shall be made semiannually by each receiving agency during each fiscal year. Every eligible application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1) shall be considered by the receiving agency with every other application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1), respectively, and eligible for consideration during the same priority period, to determine the priority to be assigned to each application. The same procedure shall apply to every eligible application filed under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter. Any application which does not contain the information required by this Chapter or regulations adopted by the receiving agency(s) shall not be deemed received until such information is furnished by the applicant to the receiving agency.

(a1) **(See note)** Expired.

(b) Priority Factors. — All applications for revolving loans or grants under this Chapter eligible for consideration during each priority period shall be assigned a priority for funds by the receiving agency. The priority factors shall be similar to those developed under the North Carolina Clean Water Bond Act of 1977, as provided in and modified by this subsection.

(1) General Criteria. —

a. The general criteria provided in 1 NCAC 22.0401 through .0403 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c) shall apply only to State funds appropriated to match available federal funds.

b. The existence of a comprehensive land-use plan that meets the requirements of subsection (e) of this section is a general criterion for prioritizing which applicants will receive a loan or grant. An applicant that is not authorized to adopt a comprehensive land-use plan but that is located in whole or in part in a local government unit that has adopted a comprehensive land-use plan shall receive the same priority treatment as an applicant that has authority to adopt a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of subsection (e) of this section and that exceeds the minimum State standards for protection of water resources shall receive more points than a plan that does not exceed those standards. Additional points may be awarded for actions taken toward implementation of a comprehensive land-use plan. These actions may include the adoption of a zoning ordinance or any other measure that significantly contributes to the implementation of the comprehensive land-use plan.

c. **(Effective July 1, 2001)** The existence of a flood hazard ordinance conforming to the requirements of Part 6 of Article 21 of Chapter 143 of the General Statutes is a general criterion for prioritizing which applicants will receive a loan or a grant. Demonstration, based on the most recent maps prepared pursuant to the National Flood Insurance Program or approved by the Department, that no portion of the applicant's jurisdiction is located within the 100-year floodplain is a general criterion equivalent to the existence of a flood hazard ordinance conforming to the requirements of Part 6 of Article 21 of Chapter 143 of the General Statutes for prioritizing which applicants will receive a loan or a grant.

(2) Wastewater Treatment Work Projects. — The priority criteria provided in 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to applications for wastewater treatment work projects, except that 1 NCAC 22.0503 shall not apply.

(3) Wastewater Collection System Projects. — The priority criteria provided in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall apply to applications for wastewater collection system projects, except that 1 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and (4) shall not apply.

(4) Water Supply System Projects. — The priority criteria provided in 1 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to applications for water supply system projects.

(5) Wastewater Treatment Works Improvements to Meet Nitrogen and Phosphorous Limits. — The Environmental Management Commission shall adopt a rule specifying priority criteria for modifications to existing permitted wastewater treatment facilities that are owned or operated by local government units and that are subject to G.S. 143-215.1(c1) or G.S. 143-215.1(c2) to enable local government units to comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2).

(6) The total number of points available in the respective categories shall be deemed adjusted in accordance with the provisions of subdivisions (1) through (5) of this subsection.

(c) Assignment of Priority. — A written statement relative to each priority assigned shall be prepared by the receiving agency and shall be attached to the application. The priority assigned shall be conclusive.

(d) Failure to Qualify. — Any application filed under G.S. 159G-5(c), G.S. 159G-6(b) or G.S. 159G-6(c) that does not qualify for a revolving loan or grant as of the priority period in which the application was eligible for consideration by reason of the priority assigned the application shall be considered for a revolving loan or grant during the next succeeding priority period upon request of the applicant. If such application should again fail to qualify for a revolving loan or grant during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time, and may amend any pending application to include additional data or information.

(e) Land-Use Plan. — Local government units are encouraged to adopt comprehensive land-use plans. The Division of Community Assistance in the Department of Commerce shall, upon request, provide technical assistance to any economically distressed local government unit in preparing a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of Article 18 of Chapter 153A of the General Statutes or Article 19 of Chapter 160A of the General Statutes shall contain reasonable provisions designed to protect existing water uses and assure compliance with water quality standards and classifications in all waters of the State affected by the land-use plan. (1987, c. 796, s. 1; 1989, c. 770, s. 36; 1993 (Reg. Sess., 1994), c. 696, s. 8; c. 714, s. 8; 1997-458, s. 5.1; 1999-213, s. 6; 2000-150, s. 2.)

Editor's Note. —

As to the expiration of subsection (a1), see the editor's note in the main volume.

Effect of Amendments. —

Session Laws 2000-150, s. 2, effective July 1, 2001, and applicable to loans and grants made on or after that date, deleted "such" preceding "funds by the receiving agency" at the end of the first sentence in subsection (b) and added subdivision (b)(1)c.

Chapter 159I.

North Carolina Solid Waste Management Loan Program.

§ 159I-25. Disbursement.

(a) The proceeds of any bonds or notes to be used to make loans shall be disbursed by, or pursuant to the direction of, the Office of State Budget, Planning and Management. No such proceeds shall be disbursed until the Office of State Budget, Planning and Management has received from the Division a certificate of eligibility that states that the applicant meets all eligibility criteria, and that all procedural requirements of this Chapter have been met.

(b) Once the prerequisites for disbursement have been satisfied pursuant to subsection (a) of this section, the proceeds shall be disbursed as the Board may provide. (1989, c. 756, s. 1; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" throughout subsection (a).

§ 159I-28. Rules.

(a) The Office of State Budget, Planning, and Management and the Commission for Health Services may adopt, modify and repeal rules establishing the procedures to be followed in the administration of this Chapter and regulations interpreting and applying the provisions of this Chapter, as provided in the Administrative Procedure Act. Uniform rules may be jointly adopted where feasible and desirable, and no rule jointly adopted may be modified or revoked except upon the concurrence of both agencies involved.

(b) A copy of the rules adopted to implement the provisions of this Chapter shall be furnished free of charge by the Division and the Office of State Budget, Planning, and Management to any unit of local government. (1989, c. 756, s. 1; 1997-443, s. 11A.114; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

§ 159I-29. Annual reports to Joint Legislative Commission on Governmental Operations.

(a) The Office of State Budget, Planning, and Management and the Division shall prepare and file on or before July 31 of each year with the Joint Legislative Commission on Governmental Operations a consolidated report for the preceding fiscal year concerning the allocation of loans authorized by this Chapter.

(b) The portion of the report prepared by the Office of State Budget, Planning and Management shall set forth for the preceding fiscal year itemized and total allocations for loans authorized by the Division. The Office of State Budget, Planning, and Management shall also prepare a summary report of all allocations for each fiscal year; the total funds received and allocations made; and the total unallocated funds as of the end of the preceding fiscal year.

(c) The portion of the report prepared by the Division shall include:

(1) Identification of each loan made during the preceding fiscal year; the total amount of the loan commitments; the sums actually paid during the preceding fiscal year to each loan disbursed and to each loan previously committed but unpaid; and the total loan funds paid during the preceding fiscal year;

(2) A summary for all preceding years of the total number of loans made; the total funds committed to these loans; the total sum actually paid to loans; and

(3) Assessment and evaluation of the effects that approved projects have had upon solid waste management within the purposes of this Chapter.

(d) The report shall be signed by each of the chief executive officers of the two State agencies preparing the report. (1989, c. 756, s. 1; 1993, c. 553, s. 57; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management."

Chapter 160A.

Cities and Towns.

Article 1.

Definitions and Statutory Construction.

§ 160A-4. Broad construction.

CASE NOTES

Contract with Town Manager Not Ultra Vires. — The execution of an employment contract providing severance pay to an at-will town manager was not ultra vires. Myers v.

Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122 (1999).

Article 2.

General Corporate Powers.

§ 160A-11. Corporate powers.

CASE NOTES

Stated in Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999); Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122 (1999).

§ 160A-12. Exercise of corporate power.

CASE NOTES

Stated in Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

Article 3.

Contracts.

§ 160A-16. Contracts to be in writing; exception.

CASE NOTES

Quoted in Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

Article 4.

Corporate Limits.

Part 1. General Provisions.

§ 160A-23.1. Special rules for redistricting after 2000 census.

(a) As soon as possible after receipt of federal census information in 2001 the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes (and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revisal under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes, except that the ordinance under G.S. 160A-102 may be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in 2001 or 2002.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

(1) Proposed changes to the electoral districts are not adopted, or

(2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

(1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in 2002, the second primary, if necessary, shall be held on the second primary election date for county officers in 2002, and the general election shall be held on the general election date for county officers in 2002;

(2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in 2002 and the election shall be held on the date for the second primary for county officers in 2002;

(3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in 2002;

(4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in 2002 and the runoffs, if necessary, shall be held on the date for the second primary for county officers in 2002.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in July 2002, except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of 2002. (1989 (Reg. Sess., 1990), c. 1012, s. 2; 1999-227, s. 4; 2000-140, s. 34.)

Effect of Amendments. —
Session Laws 2000-140, s. 34, effective July 21, 2000, combined a former first subdivision (1) and (2) of subsection (d) into the first sentence of the subsection, and substituted "2002" for "1992" at the end of present subdivision (d)(1).

Article 4A.

Extension of Corporate Limits.

Part 1. Extension by Petition.

§ 160A-31. Annexation by petition.

Local Modification. — City of Mount Holly: 2000-24, s. 1. For additional local modifications to this section, see the main volume.

Part 2. Annexation by Cities of Less than 5,000.

§ 160A-33. Declaration of policy.

Local Modification. — (As to Parts 2 and 3 of Article 4A) Cabarrus: 2000-7, s. 1 (effective until June 30, 2010); Durham: 2000-93, s. 1; Wake: 2000-93, s. 1; (As to Parts 2 and 3 of Article 4A) town of Laurel Park: 1997, c. 188; 2000-8, s. 1. By virtue of Session Laws 2000-63, s. 1, Village of Sugar Mountain: 1985, c. 395, should be stricken from the main volume. For additional local modifications to this section, see the main volume.

CASE NOTES

Cited in Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999).

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

Quoted in Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999).

§ 160A-36. Character of area to be annexed.

CASE NOTES

I. IN GENERAL.

Cited in Arquilla v. City of Salisbury, 136 N.C. App. 24, 523 S.E.2d 155 (1999), cert. denied, 351 N.C. 350, — S.E.2d — (2000).

II. STANDARDS UNDER SUBSECTION (b).

Annexation of Area in Another Municipality Prohibited. — Summary judgment was proper in case involving a determination of prior jurisdiction between two towns' competing resolutions of intent where one municipality had sought to involuntarily annex two acres within the boundaries of the other. Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999).

Competing Resolutions of Intent and Priority Jurisdiction. — A resolution of intent to annex territory which includes any territory already within the boundaries of another municipality is void and will lose priority to an intervening and competing valid resolution of intent; the elements listed in this section are "essential elements" with regard to a "prior jurisdiction" determination. Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999).

§ 160A-37. Procedure for annexation.

CASE NOTES

Applied in Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999).

§ 160A-38. Appeal.

CASE NOTES

Applied in Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999).

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy.

Local Modification. — (As to Parts 2 and 3 of Article 4A) Cabarrus: 2000-7, s. 1 (effective until June 30, 2010); Durham: 2000-93, s. 1; Wake: 2000-93, s. 1; (As to Parts 2 and 3 of Article 4A) town of Laurel Park: 1997, c. 188; 2000-8, s. 1. For additional local modifications to this section, see the main volume.

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

III. PLANS FOR EXTENDING SERVICES.

A. In General.

Plan Held Sufficient. — City's annexation plan which included provisions for police and fire protection and capital improvements for new water lines complied with subdivision (3)a. of this section, even though it did not include provisions for additional staff or equipment. Bali Co. v. City of Kings Mt., 134 N.C. App. 277, 517 S.E.2d 208 (1999).

§ 160A-48. Character of area to be annexed.

CASE NOTES

Substantial Compliance with Subdivision (c)(3) Shown. — Petitioners/property owners failed to overcome the presumption that the City substantially complied with subdivision (c)(3) of this section when it moved to annex disputed areas; mobile homes used to meet the "urban purposes" percentage requirement were "constructed" on the lots pursuant to "residential purposes" defined by § 160A-53(2), and the deletion of a condemned home, originally included as a "habitable" residence, did not affect the calculations or the city's compliance. Bali Co. v. City of Kings Mt., 134 N.C. App. 277, 517 S.E.2d 208 (1999).

Topographic Features Requirement. — In addressing the division between urban and non-urban areas, this section requires the use of topographic features to fix exterior boundaries of the municipality as annexed, but does not speak to interior boundaries. Bali Co. v. City of Kings Mt., 134 N.C. App. 277, 517 S.E.2d 208 (1999).

While this section does not provide "mandatory standards or requirements for annexation," the provision itself is mandatory in light of the N.C. Supreme Court's holding in Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 that a boundary "must" follow topographic features unless to do so would defeat the annexation. Arquilla v. City of Salisbury, 136 N.C. App. 24, 523 S.E.2d 155 (1999), cert. denied, 351 N.C. 350, — S.E.2d — (2000).

Landowners met their burden of showing that the boundary of an involuntarily annexed area failed to follow natural topographic features, and that it would have been practical for the boundary to follow such features. Arquilla v. City of Salisbury, 136 N.C. App. 24, 523 S.E.2d 155 (1999), cert. denied, 351 N.C. 350, — S.E.2d — (2000).

Governmental Use. — Involuntary annexation was improper where there was insufficient evidence of governmental use on four disputed tracts; while the evidence supported a finding of common ownership, there was insufficient evidence that the lots served a common purpose, and the court, therefore, erred in relying on a plan of future development to classify the entire tract as under governmental use. Arquilla v. City of Salisbury, 136 N.C. App. 24, 523 S.E.2d 155 (1999), cert. denied, 351 N.C. 350, — S.E.2d — (2000).

§ 160A-49. Procedure for annexation.

Local Modification. — Town of Matthews: 2000-100, s. 4.1. For additional local modifications to this section, see the main volume.

§ 160A-53. Definitions.

CASE NOTES

Mobile Homes as "Constructed" for "Residential Purposes" Requirement. — Petitioners/property owners failed to overcome the presumption that the City substantially complied with § 160A-48(c)(3) when it moved to annex disputed areas; mobile homes used to meet the "urban purposes" percentage requirement were "constructed" on the lots pursuant to "residential purposes" as defined by subdivision (2) of this section, and the deletion of a condemned home, originally included as a "habitable" residence, did not affect the calculations or the city's compliance. Bali Co. v. City of Kings Mt., 134 N.C. App. 277, 517 S.E.2d 208 (1999).

ARTICLE 5.

Form of Government.

Part 1. General Provisions.

§ 160A-63. Vacancies.

Local Modification. — City of Monroe: 2000-35, s. 1. For additional local modifications to this section, see the bound volume.

Part 2. Mayor and Council.

§ 160A-67. General powers of mayor and council.

CASE NOTES

Stated in Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

Part 3. Organization and Procedures of the Council.

§ 160A-68. Organizational meeting of council.

OPINIONS OF ATTORNEY GENERAL

For discussion of legal impediments which prohibit employers from disclosing personal information about their employees, see opinion of Attorney General to Bryan E. Beatty, Inspector General, North Carolina Department of Justice, 1998 N.C.A.G. 49 (12/1/98).

Part 4. Modification of Form of Government.

§ 160A-104. Initiative petitions for charter amendments.

The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the city equal to at least ten percent (10%) of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall set forth the proposed amendments by describing them briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on the question of adopting the charter amendments proposed therein, and shall give public notice thereof in accordance with G.S. 163-287. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the council shall adopt an ordinance amending the charter to put them into effect. Such an ordinance shall not be subject to a referendum petition. No initiative petition may be filed (i) between the time the council initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceeding under that section have been carried to a conclusion either through adoption or rejection of a proposed ordinance or lapse of time, nor (ii) within one year and six months following the effective date of an ordinance amending the city charter pursuant to this Article, nor (iii) within one year and six months following the date of any election on charter amendments that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter. For example, pendency of council action on amendments concerning the method of electing the council shall not preclude an initiative petition on adoption of the council-manager form of government.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for charter amendments on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 21; 1979, 2nd Sess., c. 1247, ss. 12, 14.)

Editor's Note. — The section above is set out to correct the erroneous version in the main volume.

Article 7.

Administrative Offices.

Part 2. Administration of Council-Manager Cities.

§ 160A-147. Appointment of city manager; dual office holding.

CASE NOTES

Severance Pay Not at Odds with "At Will" Employment. — An agreement providing severance pay to a town manager does not prohibit, although it may deter, a town from terminating the town manager "at will" in violation of this section. Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122 (1999).

Part 4. Personnel.

§ 160A-162. Compensation.

CASE NOTES

Contract with Town Manager Not Ultra Vires. — The execution of an employment contract providing severance pay to an at-will town manager was not ultra vires. Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122 (1999).

§ 160A-169. City employee political activity.

OPINIONS OF ATTORNEY GENERAL

The provisions of this section and § 153A-99 are applicable to elected officials of counties and cities. See opinion of Attorney General to Mr. William R. Gilkeson, Staff Attorney, N.C. General Assembly, 1998 N.C.A.G. 1 (1/14/98).

Article 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

OPINIONS OF ATTORNEY GENERAL

Local Ordinance Which Conflicts With State Law. — A town municipal ordinance prohibiting the location of gill nets where they are expressly permitted by State law violates subdivision (b)(2) of this section and is, therefore, invalid to the extent of the conflict with State law. See opinion of Attorney General to Preston P. Pate, Jr., Director, Division of Marine Fisheries, 1998 N.C.A.G. 31 (7/22/98).

Article 9.

Taxation.

§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope.— This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy.— A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection.— Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration.— The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties.— A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction.— A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to the Cities of Goldsboro, Greensboro, Lumberton, Mount Airy, Shelby, and Statesville, to the Towns of Banner Elk, Mooresville, and St. Pauls, and to the municipalities in Brunswick County. (1997-361, s. 4; 1997-364, s. 5; 1997-410, s. 3; 1997-447, s. 2; 1998-112, s. 4; 1999-258, s. 3; 1999-302, s. 2; 2000-103, s. 9.)

Effect of Amendments. — Session Laws 2000-103, s. 9, effective October 1, 2000, and applicable to taxes collected on or after that date, added "Banner Elk" in the list of towns in subsection (g).

§ 160A-215.1. Gross receipts tax on short-term leases or rentals.

(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. 105-275(42), a city may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one and one-half percent (1.5%) of the gross receipts from such short-term leases or rentals. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. 160A-211.

(b) If a city enacts the substitute and replacement gross receipts tax pursuant to this section, any entity required to collect the tax shall include a provision in each retail short-term lease or rental agreement noting that the percentage amount enacted by the city of the total lease or rental price, excluding highway use tax, is being charged as a tax on gross receipts. For purposes of this section, the transaction giving rise to the tax shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle. The tax shall be collected at the time of lease or rental and placed in a segregated account until remitted to the city.

(c) The collection and use of taxes under this section are not subject to highway use tax and are not included in the gross receipts of the entity. The proceeds collected under this section belong to the city and are not subject to creditor liens against the entity.

(d) A tax levied under this section shall be collected by the city but otherwise administered in the same manner as the tax levied under G.S. 105-164.4(a)(2).

(e) The following definitions apply in this section:

(1) Short-term lease or rental. — Defined in G.S. 105-187.1.

(2) Vehicle. — Any of the following:

a. A motor vehicle of the passenger type, including a passenger van, minivan, or sport utility vehicle.

b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to posses a commercial drivers license.

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

(f) The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of Chapter 105 of the General Statutes apply to a tax levied under this section. The governing body of the city may exercise any power the Secretary of Revenue may exercise in collecting local sales and use taxes. (2000-2, s. 3; 2000-140, s. 75(c).)

Editor's Note. — Session Laws 2000-2, s. 5, made this section effective July 1, 2000.

Session Laws 2000-2, s. 4, directs the Fiscal Research Division of the General Assembly to compare the revenue generated statewide by the substitute and replacement gross receipts tax authorized by the act with the revenue that would have been generated by an ad valorem tax and to report its findings to the 2003 Session of the 2003-2004 General Assembly.

The definitions in subsection (e) have been set out in alphabetical order at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2000-140, s. 75(c), effective July 1, 2000, substituted "G.S. 105-275(42)" for "G.S. 105-275(41)" in subsection (a); substituted "highway use" for "sales" in subsections (b) and (c); deleted "private" preceding "passenger type" in subdivision (e)(1)a.; and substituted "Chapter 105 of the General Statutes" for "this Chapter" in subsection (f).

Article 10.

Special Assessments.

§ 160A-216. Authority to make special assessments.

Local Modification. — (As to Article 10) City of Monroe: 2000-35, s. 1. By virtue of Session Laws 2000-8, s. 4, town of Laurel Park: 1991, c. 559, should be stricken from the main volume. For additional local modifications to this section, see the main volume.

§ 160A-217. Petition for street or sidewalk improvements.

Local Modification. — City of Laurinburg: 2000-13, s. 1. For additional local modifications to this section, see the main volume.

ARTICLE 11.

Eminent Domain.

§ 160A-240.1. Power to acquire property.

Local Modification. — City of Monroe: 2000-35, s. 1. For additional local modifications to this section, see the main volume.

ARTICLE 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

Local Modification. — Lenoir: 2000-48, s. 2; (As to Art. 12) city of Charlotte: 2000-26, s. 1; city of Kinston: 2000-48, s. 2; Foothills Regional Airport Authority: 2000-9, s. 7. (As to Art. 12) Asheville-Buncombe Technical Community College: 2000-99, s. 1. By virtue of Session Laws 2000-26, s. 4, city of Charlotte: 1999-88, s. 1; 1999-99, s. 1; 1999-456, s. 46, should be stricken from the main volume. For additional local modifications to this section, see the main volume.

CASE NOTES

Stated in Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

§ 160A-266. Methods of sale; limitation.

Local Modification. — Gaston: 2000-96; Mecklenburg: 2000-65 (expires the earlier of June 30, 2002, or the date on which all property described in s. 2 of the act is sold, exchanged, or transferred). For additional local modifications to this section, see the main volume.

§ 160A-269. Negotiated offer, advertisement, and upset bids.

Local Modification. — City of Charlotte: 2000-26, s. 1.

§ 160A-272. Lease or rental of property.

Local Modification. — Cabarrus: 2000-88, s. 2; city of Charlotte: 2000-26, s. 1. city of Concord: 2000-88, s. 2. By virtue of Session Laws 2000-26, s. 4, city of Charlotte: 1979, c. 466; 1985, c. 388 should be stricken from the main volume. For additional local modifications to this section, see the main volume.

CASE NOTES

Leasing Property is a Proprietary Activity. — The rule of governmental immunity did not bar plaintiff's claim against the town because the town's execution of a lease of town property was proprietary in nature. Stephenson v. Town of Garner, — N.C. App. —, 524 S.E.2d 608, 2000 N.C. App. LEXIS 54 (2000).

Article 13.

Law Enforcement.

§ 160A-281. Policemen appointed.

CASE NOTES

Cited in Isenhour v. Hutto, 350 N.C. 601, 517 S.E.2d 121 (1999).

§ 160A-284. Oath of office; holding other offices.

CASE NOTES

Cited in Isenhour v. Hutto, 350 N.C. 601, 517 S.E.2d 121 (1999).

§ 160A-285. Powers and duties of policemen.

CASE NOTES

Cited in Isenhour v. Hutto, 350 N.C. 601, 517 S.E.2d 121 (1999).

§ 160A-288. Cooperation between law-enforcement agencies.

CASE NOTES

State Must Show That Officer Was a Government Officer. — The State did not meet its burden of showing that the officer was a government officer at the time of the incident because the officer was outside the jurisdiction of his city police department pursuant to § 15A-402, and the State failed to show that the requirements of this section and the emergency assistance provisions of the Mutual Aid Agreement were followed. State v. Locklear, — N.C. App. —, 525 S.E.2d 813, 2000 N.C. App. LEXIS 138 (2000).

§ 160A-289.1. Resources to protect the public.

Subject to the requirements of G.S. 7A-41, 7A-44.1, 7A-64, 7A-102, 7A-133, and 7A-467, a city may appropriate funds under contract with the State for the provision of services for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving threats to public safety. Nothing in this section shall be construed to obligate the General Assembly to make any appropriation to implement the provisions of this section. Further, nothing in this section shall be construed to obligate the Administrative Office of the Courts to maintain positions or services initially provided for under this section. (1999-237, s. 17.17(c); 2000-67, s. 15.4(f).)

Editor's Note. —
Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. — Session Laws 2000-67, s. 15.4.(f), effective July 1, 2000, substituted "G.S. 7A-41, 7A-44.1, 7A-64, 7A-102, 7A-133, and 7A-467" for "G.S. 7A-64."

Article 14.

Fire Protection.

§ 160A-292. Duties of fire chief.

CASE NOTES

Fallen Power Line — The city did not owe a special duty to a cable television repairman who was electrocuted by a fallen unmarked power line, and as plaintiff did not allege any intentional misconduct on the part of the city which would survive application of the public duty doctrine, the city was immune to liability. Vanasek v. Duke Power Co., 132 N.C. App. 335, 511 S.E.2d 41 (1999).

Article 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines.

Local Modification. — City of Monroe: 2000-35, s. 1. For additional local modifications to this section, see the main volume.

CASE NOTES

I. IN GENERAL.

Applied in Cucina v. City of Jacksonville, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 310 (2000).

II. DUTY TO KEEP STREETS, ETC., IN REPAIR.

Actual or Constructive Notice Prerequisite to Recovery. —

Summary judgment was appropriate where the plaintiff failed to offer any evidence that the city had either actual or constructive notice of any alleged defect in its sidewalk, as required to support a negligence action under this section, so as to create a genuine issue of material fact. Willis v. City of New Bern, — N.C. App. —, 529 S.E.2d 691, 2000 N.C. App. LEXIS 499 (2000).

Although court found that the maintenance of stop signs constituted a discretionary function, thereby entitling city to the defense of governmental immunity, it reversed the lower court's grant of summary judgment in the city's favor where it appeared from the record that the city was covered by a liability insurance policy at the time of the collision at issue, thereby waiving immunity from suit. Cucina v. City of Jacksonville, — N.C. App. —, 530 S.E.2d 353, 2000 N.C. App. LEXIS 547 (2000).

§ 160A-299. Procedure for permanently closing streets and alleys.

Local Modification. — City of Charlotte: 1987, c. 426 (publication period reduced); city of Statesville: 1987, c. 426 (publication period reduced). For additional local modifications, see the main volume.

§ 160A-300. Traffic control.

CASE NOTES

Applied in Cucina v. City of Jacksonville, — N.C. App. —, 530 S.E.2d 353, 2000 N.C. App. LEXIS 547 (2000).

§ 160A-300.1. Use of traffic control photographic systems.

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(b1) Any traffic control photographic system installed on a street or highway must be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall

be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(d) This act applies to the Cities of Charlotte, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, and the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, and Pineville only. (1997-216, ss. 1, 2; 1999-17, s. 1; 1999-181, ss. 1, 2; 1999-182, s. 2; 1999-456, s. 48(c); 2000-37, s. 1; 2000-97, s. 2.)

Local Modification. — Town of Chapel Hill: 2000-97, s. 2(b).

Editor's Note. — Session Laws 1997-216, s. 1, effective June 23, 1997, enacted this section and s. 2 made it effective as to the city of Charlotte. Session Laws 1999-17, s. 1, effective April 17, 1999, added the city of Fayetteville. Session Laws 1999-181, effective January 1, 2000, in s. 1, added subsection (b1), added "nor insurance points as authorized by G.S. 58-36-65" at the end of subdivision (c)(2), and in s. 2, added the cities of Greensboro, High Point, and Rocky Mount. Session Laws 1999-182, effective January 1, 2000, in s. 1 made the same changes as were made by Session Laws 1999-181, s. 1, and in s. 2 added Charlotte, Fayetteville, Greenville, Wilmington, and Greensboro and the towns of Huntersville, Matthews, and Cornelius. Session Laws 1999-456, s. 48(c), effective August 13, 1999, and designed to resolve duplicate enactments by Session Laws 1999-181 and 1999-182, repealed Session Laws 1999-182, ss. 1 and 2, and rewrote Session Laws 1997-216, s. 2, as amended by Session Laws 1999-17 and Session Laws 1999-181, to add the city of Wilmington, and the towns of Cornelius, Huntersville, and Matthews. Session Laws 2000-37, s. 1, effective June 30, 2000, added the cities of Greenville and Lumberton, and the town of Pineville. Session Laws 2000-97, s. 2, effective July 10, 2000, added the town of Chapel Hill. The section has been codified at the direction of the Revisor of Statutes.

§ 160A-301. Parking.

Local Modification. — Town of Chapel Hill: 2000-97, s. 3. For additional local modifications to this section, see the main volume.

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles and motor vehicles that constitute a safety hazard.

Local Modification. — City of Winston-Salem: 2000-104, s. 1. For additional local modifications to this section, see the main volume.

§ 160A-303.2. Regulation of abandonment of junked motor vehicles.

Local Modification. — City of Winston-Salem: 2000-104, s. 2. For additional local modifications to this section, see the main volume.

Article 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

As used in this Article, the term "public enterprise" includes:

(1) Electric power generation, transmission, and distribution systems.
(2) Water supply and distribution systems.
(3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.
(5) Public transportation systems.
(6) Solid waste collection and disposal systems and facilities.
(7) Cable television systems.
(8) Off-street parking facilities and systems.
(9) Airports.
(10) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types. (1971, c. 698, s. 1; 1975, c. 549, s. 2; c. 821, s. 3; 1977, c. 514, s. 2; 1979, c. 619, s. 2; 1989, c. 643, s. 5; 1991 (Reg. Sess., 1992), c. 944, s. 14; 2000-70, s. 3.)

Local Modification. — Town of Ocean Isle Beach: 2000-43, s. 1. For additional local modifications to this section, see the main volume.

Editor's Note. — Session Laws 2000-70, s. 8, effective June 30, 2000, is a severability clause.

Effect of Amendments. — Session Laws 2000-70, s. 3, effective retroactively to July 15, 1989, substituted "or" for "and/or" in subdivision (4); inserted the language beginning "Stormwater management program" and ending "stormwater and" at the beginning of subdivision (10); and made stylistic changes.

CASE NOTES

City's Stormwater Management Program Exceeded Statutory Authority. — Durham city ordinance, designed to satisfy the EPA's National Pollutant Discharge Elimination System's permit requirements required by the Water Quality Act's demands for pollution control of stormwater discharges into public waters, and fees thereunder, exceeded its enabling authority as laid out by this section and § 160A-314(a1). Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). (decided prior to 2000 amendment).

§ 160A-314. Authority to fix and enforce rates.

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(a1)(1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

(2) The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

(3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Except as provided in subsection (d) of this section and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.

(2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith. (1971, c. 698, s. 1; 1991, c. 591, s. 1; c. 652, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 46; 1995 (Reg. Sess., 1996), c. 594, s. 28; 2000-70, s. 4.)

Editor's Note. — Session Laws 2000-70, s. 8, effective June 30, 2000, is a severability clause.

Effect of Amendments. — Session Laws 2000-70, s. 4, effective retroactively to July 15, 1989, added subdivision designations (a1)(1) through (a1)(3); in subdivision (a1)(2), inserted "stormwater management program and a structural and natural" in the third sentence and added the fourth sentence; in subdivision (a1)(3), inserted "stormwater management programs or separate" in the first sentence, and substituted "stormwater management program and structural" for "single structural" in the second sentence; and inserted "stormwater management programs and" three times in subsection (a1).

CASE NOTES

Since this section expressly authorizes a city to base its stormwater utility (SWU) fees on the impervious area of a piece of property, the rate scheme enacted by the City of Durham pursuant to its SWU ordinance was rationally related to the amount of runoff from each lot and was not an arbitrary exercise of the city's statutory authority. Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). (decided prior to 2000 amendment).

City's Stormwater Management Program Exceeded Statutory Authority. — Durham city ordinance, designed to satisfy the EPA's National Pollutant Discharge Elimination System's permit requirements required by the Water Quality Act's demands for pollution control of stormwater discharges into public waters, and fees thereunder, exceeded its enabling authority as laid out by § 160A-311 and subsection (a1) of this section. Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). (decided prior to 2000 amendment).

Landowners Entitled to Refund Where Ordinance and Fees Were Illegal. — Where city's stormwater utility ordinance and fees charged thereunder were invalid as a matter of law, plaintiffs were entitled to a full refund of the illegally collected fees, plus interest on those fees to the date of judgment. Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). (decided prior to 2000 amendment).

Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

Local Modification. — (As to Article 19) Wake: 2000-66, s. 1; (As to Article 19) city of Raleigh: 2000-66, s. 1; city of Whiteville: 2000-78, s.1; (As to Article 19) town of Apex: 2000-66,

s. 1; (As to Article 19) town of Cary: 2000-66, s. 1; (As to Article 19) town of Garner: 2000-66, s. 1. For additional local modifications to this section, see the main volume.

Part 3. Zoning.

§ 160A-381. Grant of power.

CASE NOTES

I. In General.
V. Conditional or Special Use Permits.

I. IN GENERAL.

Applied in Village Creek Property Owners Ass'n v. Town of Edenton, 135 N.C. App. 482, 520 S.E.2d 793 (1999).

V. CONDITIONAL OR SPECIAL USE PERMITS.

Dismissal based on sovereign immunity was proper because conditional use permitting requires the exercise of substantial discretion on the part of local officials in deciding important community-wide land use policies, and therefore, is legislative and discretionary in nature. Stephenson v. Town of Garner, — N.C. App. —, 524 S.E.2d 608, 2000 N.C. App. LEXIS 54 (2000).

Denial of a special use permit should be based on findings, etc.

Where petitioners produced competent, material and substantial prima facie evidence to show their compliance with four general conditions required to obtain a special use permit needed to construct a mobile home park, and where the city council failed to make adequate findings of fact to support denial of the special use application, such action constituted "an unlawful exercise of legislative power by the Board ... in violation of Article II, Section I, of the Constitution of North Carolina." Clark v. City of Asheboro, 136 N.C. App. 114, 524 S.E.2d 46 (1999).

§ 160A-383.1. Zoning regulations for manufactured homes.

CASE NOTES

Standing. — It was error for the trial court to dismiss plaintiff's claims based on mootness and lack of standing where property ownership was irrelevant and where the failure to rezone directly and adversely affected the plaintiff's pecuniary interest. Northfield Dev. Co. v. City of Burlington, — N.C. App. —, 523 S.E.2d 743, 2000 N.C. App. LEXIS 2 (2000).

This section does not require a city to adopt Manufactured Home Overlay District. Northfield Dev. Co. v. City of Burlington, — N.C. App. —, 523 S.E.2d 743, 2000 N.C. App. LEXIS 2 (2000).

Manufactured Homes Not Excluded from Entire Jurisdiction. — A city's refusal to rezone an area at plaintiff's request did not constitute a decision to preclude the use of manufactured homes in city's "entire zoning jurisdiction" in violation of subsection (c) of this section. Northfield Dev. Co. v. City of Burlington, — N.C. App. —, 523 S.E.2d 743, 2000 N.C. App. LEXIS 2 (2000).

§ 160A-388. Board of adjustment.

Local Modification. — City of Charlotte: 2000-26, s. 1. For additional local modifications to this section, see the main volume.

CASE NOTES

I. In General.
II. Judicial Review.

I. IN GENERAL.

Stated in Village Creek Property Owners Ass'n v. Town of Edenton, 135 N.C. App. 482, 520 S.E.2d 793 (1999).

Cited in Brown v. City of Greensboro, — N.C. App. —, 528 S.E.2d 588, 2000 N.C. App. LEXIS 271 (2000); Stephenson v. Town of Garner, — N.C. App. —, 524 S.E.2d 608, 2000 N.C. App. LEXIS 54 (2000); Kirkpatrick v. Village Council, — N.C. App. —, 530 S.E.2d 338, 2000 N.C. App. LEXIS 553 (2000).

II. JUDICIAL REVIEW.

Only persons "aggrieved" within the meaning of this section possess standing to seek judicial review. —

An adjoining property owner was an aggrieved party, even though she failed to allege such, and the trial court had jurisdiction to allow her to amend her petition for certiorari, where she sought certiorari for judicial review of the zoning board's grant of a setback variance. Darnell v. Town of Franklin, 131 N.C. App. 846, 508 S.E.2d 841 (1998).

Part 3C. Historic Districts and Landmarks.

§ 160A-400.8. Powers of the Historic Preservation Commission.

CASE NOTES

Quoted in Suhre v. Haywood County, 55 F. Supp. 2d 384 (W.D.N.C. 1999).

§ 160A-400.11. Remedies.

CASE NOTES

Stated in Suhre v. Haywood County, 55 F. Supp. 2d 384 (W.D.N.C. 1999).

Part 5. Building Inspection.

§ 160A-414. Financial support.

OPINIONS OF ATTORNEY GENERAL

Statutorily Obligated Services to School System. — Any agreement between a county school system and a county or municipality which obligates the school system to pay the county or municipality "development charges" under the guise of consideration for services which the county or municipality is statutorily obligated to provide would be null and void as contrary to legislative intent. See opinion of Attorney General to The Honorable J. Sam Ellis House of Representatives, 1998 N.C.A.G. 41 (10/13/98).

§ 160A-423. Certificates of compliance.

CASE NOTES

Cited in Nolan v. Paramount Homes, Inc., 135 N.C. App. 73, 518 S.E.2d 789 (1999).

§ 160A-426. Unsafe buildings condemned.

(a) Residential Building. — Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building.

(b) Nonresidential Building or Structure. — An inspector may declare a nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

(1) It appears to the inspector to be vacant or abandoned.

(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

If an inspector declares a nonresidential building or structure to be unsafe, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this subsection, the term "community development target area" means an area that has characteristics of a development zone under G.S. 105-129.3A, a "nonresidential development area" under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens. (1905, c. 506, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C.S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 1.)

Effect of Amendments. — Session Laws 2000-164, s. 1, effective August 2, 2000, designated the existing paragraph as present subsection (a); inserted "Residential Building" at the beginning of subsection (a); and added subsection (b).

§ 160A-428. Action in event of failure to take corrective action.

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service,

(1) That the building or structure is in a condition that appears to meet one or more of the following conditions:

a. Constitutes a fire or safety hazard.

b. Is dangerous to life, health, or other property.

c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.

d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

(2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
(3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 2.)

Effect of Amendments. — Session Laws 2000-164, s. 2, effective August 2, 2000, rewrote subdivision (1), adding the subdivision (1)a through (1)d scheme and substantively adding subdivisions (1)c and (1)d.

§ 160A-430. Appeal; finality of order if not appealed.

Any owner who has received an order under G.S. 160A-429 may appeal from the order to the city council by giving notice of appeal in writing to the inspector and to the city clerk within 10 days following issuance of the order. In the absence of an appeal, the order of the inspector shall be final. The city council shall hear and render a decision in an appeal within a reasonable time. The city council may affirm, modify and affirm, or revoke the order. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 69; 2000-164, s. 4.)

Effect of Amendments. — Session Laws 2000-164, s. 4, effective July 1, 2000, and applicable to appeals filed on or after that date, divided the former final sentence into the present last two sentences, in the next-to-last sentence inserted "and render a decision in", and deleted "and" at the end thereof, and added "The City Council" at the beginning of the last sentence.

§ 160A-432. Civil and equitable enforcement.

(a) Civil Enforcement. — Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(b) Equitable Enforcement. — In the case of a nonresidential building or structure declared unsafe under G.S. 160A-426(b), a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(c) Nothing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 3.)

Effect of Amendments. — Session Laws 2000-164, s. 3, effective August 2, 2000, added "Civil and" in the section heading; designated the existing paragraph as present subsection (a); inserted "Civil Enforcement" at the beginning of subsection (a); and added subsections (b) and (c).

Part 6. Minimum Housing Standards.

§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of 71,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 71,000 by the last federal census.

(6) That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be

vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under subdivisions (4) and (5) of this section to vacate and close or remove and demolish the dwelling.

(8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition. (1939, c. 287, s. 3; 1969, c. 868, ss. 1, 2; c. 1065, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 70; 1983, c. 698; 1987, c. 542; 1989, c. 562; 1991, c. 208, s. 1; c. 315, s. 1; c. 581, s. 1; 1993, c. 539, s. 1095; c. 553, ss. 58, 59; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 347, s. 1; c. 509, s. 112; 2000-186, s. 1.)

Effect of Amendments. — Session Laws 2000-186, s. 1, effective August 2, 2000, substituted "71,000" for "163,000" in subdivision (5a)a and in the last paragraph in subdivision (5a).

Article 20.

Interlocal Cooperation.

Part 4. Facility Authorities.

§ 160A-480.1. Short title.

OPINIONS OF ATTORNEY GENERAL

Appointment Prohibition. — The General Assembly did not restrict boards of county commissioners and city councils from appointing their employees, agents or officers, although the General Assembly prohibited these bodies from appointing themselves to a facility authority. See opinion of Attorney General to George B. Daniel, Chairman, Legal Bylaws Committee, The Centennial Authority, 1999 N.C.A.G. 3 (1/28/99).

§ 160A-480.3. Creation of Authority; additional membership.

(a) Creation. — An authority may be created only by act of the General Assembly. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be a county authorized by the General Assembly to levy a room occupancy tax and a prepared food and beverage tax, and where both those taxes have been levied.

(b) Membership. — An authority shall have eight or 19 members. Members shall be chosen for terms as follows:

(1) Four shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county;

(2) Four shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county; and

(3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:

a. Four members shall be appointed by the board of commissioners of that county, one of whom at the time of appointment is a resident of the municipality with the second largest population in the county, according to the most recent decennial federal census;

b. Four members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census;

c. Two members shall be appointed jointly by the mayors of all the cities in that county.

d. The Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee.

Beginning January 1, 1999, a majority of any executive committee, or other committee however termed having supervisory or management authority over the facility to be constructed by the authority, shall consist of authority members appointed under this subsection.

Neither the board of commissioners nor the city council may appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is created. The third member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2003. The third member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2003. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the Speaker of the House of Representatives, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the President Pro Tempore of the Senate, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. The second member appointed under sub-subdivision (3)c. of this section shall serve an initial term expiring July 1, 2003. Successors shall be appointed in the same manner for four-year terms. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members.

(c) Purpose. — The purpose of an authority is to study, design, plan, construct, own, promote, finance, and operate a regional facility.

(d) Charter and Bylaws. — The act creating an authority and any amendments to it is the Authority's charter. The charter of an authority shall include the name of the Authority. An authority may adopt bylaws which may do any one or more of the following:

(1) Limit the powers, duties, and functions that the Authority may exercise and perform.

(2) Prescribe the compensation and allowances not to exceed those provided by G.S. 93B-5, if any, to be paid to the members of the Authority.

(3) Contain rules for the conduct of Authority business and any other matter pertaining to the organization, powers, and functioning of the Authority that the members consider appropriate.

(e) Meetings. — An authority shall meet at a time and place agreed upon by its members. The initial meeting may be called by any four members. At its first meeting, the members shall elect a chairperson and any other officers that the charter may specify or the members may consider advisable. The Authority shall then adopt bylaws for the conduct of its business.

(f) Fiscal Accountability. — An authority is a public authority subject to the provisions of Article 3 of Chapter 159 of the General Statutes.

(g) Conflicts. — If any member, officer, or employee of an Authority shall be:

(1) Interested either directly or indirectly; or

(2) An officer or employee of or have an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly,

in any contract with that Authority, the interest shall be disclosed to the Authority and shall be set forth in the minutes of the Authority. The member, officer, or employee having an interest shall not participate on behalf of the Authority in the authorization of such contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this subsection do not affect the validity of any bonds or notes issued under this Chapter. (1995, c. 458, s. 1; 1997-68, s. 1; 2000-181, s. 2.5.)

Effect of Amendments. —

Session Laws 2000-181, s. 2.5, effective August 2, 2000, substituted "19 members" for "17 members" in subsection (b); substituted "Two members" for "One member" in subdivision (b)(3)c; added subdivision (b)(3)d; substituted "subsection" for "subdivision" in the paragraph following subdivision (b)(3)d; and inserted "The second member appointed under sub-subdivision (3)c of this section shall serve an initial term expiring July 1, 2003" in the last paragraph.

OPINIONS OF ATTORNEY GENERAL

Participation by Local Government Employees. — The managers and attorneys of a local city and county appointed to the Centennial Authority could participate in discussions and votes affecting their employers, the city and county, because the General Assembly specifically excluded from the definition of "conflicts" an officer or employee of "units of local government." See opinion of Attorney General to George B. Daniel, Chairman, Legal Bylaws Committee, The Centennial Authority, 1999 N.C.A.G. 3 (1/28/99).

Article 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

CASE NOTES

Public Duty Doctrine Did Not Shield a City Engaged in an Ultrahazardous Activity — The plaintiff stated a claim upon which relief could be granted when he alleged that defendant/city was strictly liable for the injuries which he sustained as a result of defendants' use of dynamite, an ultrahazardous activity. The public duty doctrine did not shield the city from liability for this claim because the protection afforded by the public duty doctrine does not extend to local governmental agencies other than law enforcement agencies engaged in their general duty to protect the public. Hargrove v. Billings & Garrett, Inc., — N.C. App. —, 529 S.E.2d 693, 2000 N.C. App. LEXIS 535 (2000).

A waiver of governmental immunity does not create a cause of action, etc.

Where the public duty doctrine precluded plaintiff from producing an essential element of her negligence claim, i.e., that plaintiff was owed a duty by the defendant/city, the city's purchase of liability insurance did not create a cause of action where none previously existed. Cucina v. City of Jacksonville, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 310 (2000).

Allegations of Waiver Required. —

Defendant/town and its employee were entitled to immunity from plaintiffs' suit for negligence where woman, who was injured by a garbage truck, and her husband failed to allege the waiver of liability through the purchase of insurance, and the pleadings failed to state clearly in which capacity, individually or officially, the employee was being sued. Reid v. Town of Madison, — N.C. App. —, 527 S.E.2d 87, 2000 N.C. App. LEXIS 260 (2000).

Illustrative Cases. —

The city did not waive governmental immunity by participating in a local government risk pool because the "Fund" in which the city participated: (1) failed to cover the plaintiffs' claims, (2) required reimbursement, (3) two members of the fund were not "local governments," (4) no notice was given to the commissioner of insurance that the participating entities intended to organize and operate a risk pool pursuant to statute, and (5) the "Fund" did not contain a provision for a system or program of loss control as required by § 58-23-5. Dobrowolska v. Wall, — N.C. App. —, 530 S.E.2d 590, 2000 N.C. App. LEXIS 539 (2000).

Cited in Lovelace v. City of Shelby, 351 N.C. 458, 526 S.E.2d 652 (2000); Cucina v. City of Jacksonville, — N.C. App. —, 530 S.E.2d 353, 2000 N.C. App. LEXIS 547 (2000).

§ 160A-486. Estimates of population.

When a newly incorporated municipality is not included in the most recent federal census of population but otherwise qualifies for distribution of State-collected funds allocated wholly or partially on the basis of current population estimates, the municipality shall be entitled to participate in the distribution of these funds by reporting all information designated by the Office of State Budget, Planning, and Management. An estimate of this city's population will be made by the Office of State Budget, Planning, and Management in accordance with procedures designated by that office. The estimate will be certified to State departments and agencies charged with the responsibility of distributing funds to local governments along with the current population estimates for all other municipalities. (1953, c. 79; 1969, c. 873; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1137, s. 46; 2000-140, s. 93.1(a).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(a), effective July 21, 2000, substituted "Office of State Budget, Planning, and Management" for "Office of State Budget and Management" in this section.

Article 26.

Regional Public Transportation Authority.

§ 160A-601. Definitions.

CASE NOTES

Quoted in McIver v. Smith, 134 N.C. App. 583, 518 S.E.2d 522 (1999).

§ 160A-610. General powers of the Authority.

The general powers of the Authority shall include any or all of the following:

(1) To sue and be sued;

(2) To have a seal;

(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation, within the limit of available funds;

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(6) To retain and employ counsel, auditors, engineers and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for the Authority's purposes, including but not necessarily limited to parking facilities;

(7a) To enhance mobility within the region and promote sound growth patterns through joint transit development projects as generally described by Federal Transit Administration (FTA) policy at 62 Fed. Reg. 12266 (1997) and implementing guidelines in FTA Circular 9300.1A, Appendix B, as the policy and guidance may be amended; and, with respect to the planning, construction, and operation of joint transit development projects, upon the governing board's adoption of policies and procedures to ensure fair and open competition, to select developers or development teams in substantially the same manner as permitted by G.S. 143-129(h); and to enter into development agreements with public, private, or nonprofit entities to undertake the planning, construction, and operation of joint transit development projects.

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate or administer any component parts of a public transportation system or to contract for the maintenance, operation or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties, including but not necessarily limited to parking facilities;

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government;

(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;

(10) To surrender to the State of North Carolina any property no longer required by the Authority;

(11) To develop and make data, plans, information, surveys and studies of public transportation facilities within the territorial jurisdiction of the Authority, to prepare and make recommendations in regard thereto;

(12) To enter in a reasonable manner lands, waters or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries;

(13) To develop and carry out demonstration projects;

(14) To make, enter into, and perform contracts with private parties, and public transportation companies with respect to the management and operation of public passenger transportation;

(15) To make, enter into, and perform contracts with any public utility, railroad or transportation company for the joint use of property or rights, for the establishment of through routes, joint fares or transfer of passengers;

(16) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation;

(17) With the consent of the unit of local government which would otherwise have jurisdiction to exercise the powers enumerated in this subdivision: to issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements and in all respects to regulate the operation of buses, taxicabs and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the Authority as fully as the unit of local government is now or hereafter empowered to do within the territorial jurisdiction of the unit of local government;

(18) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of public transportation systems outside the territorial jurisdiction of the Authority except as provided by subdivision (20) of this section;

(19) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation au-

thorities or units of local government pursuant to the provisions of G.S. 160A-460 through 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes); further to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a public transportation system outside the service area of the Authority;

(20) To operate public transportation systems extending service into any political subdivision of the State of North Carolina unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board, shall deny consent, but such service may not extend more than 10 miles outside of the territorial jurisdiction of the authority, except that vanpool and carpool service shall not be subject to that mileage limitation;

(21) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees and charges for use of its public transportation system;

(22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority;

(23) To collect or contract for the collection of taxes which it is authorized by law to levy;

(24) To issue bonds or other obligations of the Authority as provided by law and apply the proceeds thereof to the financing of any public transportation system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations; and

(25) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased with or without option to purchase, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety; for these purposes a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the city or county in which said member of such force is discharging such duties. (1989, c. 740, s. 1; 1998-70, s. 2; 2000-67, s. 25.6.)

Editor's Note. —
Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Effect of Amendments. —
Session Laws 2000-67, s. 25.6, effective July 1, 2000, added subdivision (7a).

Chapter 161.

Register of Deeds.

Article 1.

The Office.

Article 1.

The Office.

§ 161-10. Uniform fees of registers of deeds.

(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. — For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be six dollars ($6.00) for the first page, which page shall not exceed 8½ inches by 14 inches, plus two dollars ($2.00), for each additional page or fraction thereof. A page exceeding 8½ inches by 14 inches shall be considered two pages.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. — For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ten dollars ($10.00) for the first page, which page shall not exceed 8½ inches by 14 inches, plus two dollars ($2.00) for each additional page or fraction thereof. A page exceeding 8½ inches by 14 inches shall be considered two pages.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

(2) Marriage Licenses. — For issuing a license forty dollars ($40.00); for issuing a delayed certificate with one certified copy five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy five dollars ($5.00).

(3) Plats. — For each original or revised plat recorded twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat three dollars ($3.00).

(4) Right-of-Way Plans. — For each original or amended plan and profile sheet recorded five dollars ($5.00). This fee is to be collected from the Board of Transportation.
(5) Registration of Birth Certificate One Year or More after Birth. — For preparation of necessary papers when birth to be registered in another county five dollars ($5.00); for registration when necessary papers prepared in another county, with one certified copy five dollars ($5.00); for preparation of necessary papers and registration in the same county, with one certified copy ten dollars ($10.00).
(6) Amendment of Birth or Death Record. — For preparation of amendment and affecting correction two dollars ($2.00).
(7) Legitimations. — For preparation of all documents concerned with legitimations seven dollars ($7.00).
(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. — For furnishing a certified copy of a death or birth certificate or marriage license three dollars ($3.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.
(8a) Vital Records Network. — For obtaining access to the Vital Records Computer Network, two dollars ($2.00).
(9) Certified Copies. — For furnishing a certified copy of an instrument for which no other provision is made by this section three dollars ($3.00) for the first page, plus one dollar ($1.00) for each additional page or fraction thereof.
(10) Comparing Copy for Certification. — For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof two dollars ($2.00).
(11) Uncertified Copies. — When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, or index pages, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.
(12) Notarial Acts. — For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in G.S. 10A-10. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.
(13) **(Effective until July 1, 2001)** Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.
(13) **(Effective July 1, 2001)** Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 5, of the General Statutes.
(14) Torrens Registration. — Such fees as are provided in G.S. 43-5.
(15) Master Forms. — Such fees as are provided for instruments in general.
(16) Probate. — For certification of instruments for registration as provided in G.S. 47-14 two dollars ($2.00).
(17) Qualification of Notary Public. — For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10A-8 five dollars ($5.00).

(18) Reinstatement of Articles of Incorporation. — For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.

(19) Miscellaneous Services. — For performing miscellaneous services such as faxing documents, providing laminated copies of documents, expedited delivery of documents, and similar services, the cost of the service.

(b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.

(c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C.S., s. 3906; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3; 1973, c. 507, s. 5; c. 1317; 1975, c. 428; 1977, 2nd Sess., c. 1132; 1981, c. 968, ss. 1, 2; 1983, c. 894, ss. 2, 3; 1987, c. 792, ss. 2-5; 1989, c. 523, s. 1; 1991, c. 636, s. 18; c. 683, s. 3; c. 693, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 49; 1993, c. 425, s. 1; 1997-309, s. 9; 2000-167, s. 1; 2000-169, s. 44.)

Subdivision (a)(13) is set out twice. — The first version is effective until July 1, 2001. The second version is effective July 1, 2001.

Effect of Amendments. — Session Laws 2000-167, s. 1, effective October 1, 2000, substituted "While performing the duties of the office" for "In the performance of his duties" in subsection (a), and added subdivisions (a)(8a) and (a)(19).

Session Laws 2000-169, s. 44, effective July 1, 2001, substituted "Part 5" for "Part 4" in subdivision (a)(13).

Chapter 162.

Sheriff.

Article 1.

The Office.

§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief deputy.

OPINIONS OF ATTORNEY GENERAL

For a discussion of the proper authority and procedures for appointing an interim county tax collector, see opinion of Attorney General to The Honorable Charles Beall, North Carolina House of Representatives, 1998 N.C.A.G. 35 (8/5/98).

Chapter 162A.

Water and Sewer Systems.

Article 1.

Water and Sewer Authorities.

§ 162A-2. Definitions.

As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "authority" shall mean an authority created under the provisions of this Article or, if such authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this Article to the authority shall be given by law.

(2) The word "Commission" shall mean the Environmental Management Commission.

(3) The word "cost" as applied to a water system or a sewer system shall include the purchase price of any such system, the cost of construction, the cost of all labor and materials, machinery and equipment, the cost of improvements, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and, if deemed advisable by the authority, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses, including reasonable provision for working capital, as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the authority or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items or cost may be regarded as a part of such cost.

(4) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, in which the general legislative powers of the political subdivision are vested.

(5) The word "improvements" shall mean such repairs, replacements, additions, extensions and betterments of and to a water system or a sewer system as are deemed necessary by the authority to place or to maintain such system in proper condition for its safe, efficient and economic operation or to meet requirements for service in areas which may be served by the authority and for which no existing service is being rendered.

(6) The word "person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(7) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district or other political subdivision or public corporation of this State now or hereafter incorporated.

(7a) The word "revenues" shall mean all moneys received by an authority from or in connection with any sewer system or water system including, without limitation, any moneys received as interest grants.

(8) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building together with such surface or groundwater or household and industrial wastes as may be present.

(9) The term "sewage disposal system" shall mean and shall include any plant, system, facility, or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage (including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources), or any integral part thereof, including but not limited to septic tank systems or other on-site collection or disposal facilities or systems, treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

(10) The word "sewers" shall include mains, pipes and laterals for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, including pumping stations where deemed necessary by the authority.

(11) The term "sewer system" shall embrace both sewers and sewage disposal systems and all property, rights, easements and franchises relating thereto.

(12) The term "water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water or the control and drainage of stormwater runoff and any integral part thereof, including but not limited to water supply systems, water distribution systems, stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof. (1955, c. 1195, s. 2; 1969, c. 850; 1971, c. 892, s. 1; 1979, c. 619, s. 8; 1989 (Reg. Sess., 1990), c. 1004, s. 43; 1991, c. 591, s. 3; 2000-70, s. 5.)

Editor's Note. — Session Laws 2000-70, s. 8, effective June 30, 2000, is a severability clause.

Effect of Amendments. — Session Laws 2000-70, s. 5, effective retroactively to July 8, 1991, inserted "stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and" in subdivision (12).

§ 162A-3.1. Alternative procedure for creation.

CASE NOTES

Cited in Piedmont Triad Regional Water Auth. v. Sumner Hills, Inc., — N.C. App. —, 524 S.E.2d 375, 2000 N.C. App. LEXIS 7 (2000).

§ 162A-6. Powers of authority generally.

(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each authority is authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;
(2) To adopt an official seal and alter the same at pleasure;
(3) To maintain an office at such place or places as it may designate;
(4) To sue and be sued in its own name, plead and be impleaded;
(5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;
(6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;
(7) To issue revenue refunding bonds of the authority as hereinafter provided;
(8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;
(9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;
(10) To acquire in the name of the authority by gift, grant, purchase, devise, exchange, lease, acceptance of offers of dedication by plat, or any other lawful method, to the same extent and in the same manner as provided for cities and towns under the provisions of G.S. 160A-240.1 and G.S. 160A-374, or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect

rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;

(12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;

(14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

(14b) To provide for the defense of civil and criminal actions and payment of civil judgments against employees and officers or former employees and officers and members or former members of the governing body as authorized by G.S. 160A-167, as amended.

(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the authority, to adopt ordinances concerning stormwater management programs designed to protect water quality by controlling the level of pollutants in and the quantity and flow of stormwater, and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body.

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Planning Officer.

(15) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(16) To purchase real or personal property as provided by G.S. 160A-20, in addition to any other method allowed under this Article.

(b) In addition to the powers given under subsection (a) of this section, an authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional, and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and, notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subsection.

(c) In addition to the powers given under subsection (a) of this section, an authority that holds a certificate issued after December 1, 1991, by the Environmental Management Commission under G.S. 162A-7 (repealed) may acquire property by the power of eminent domain or by gift, purchase, grant, exchange, lease, or any other lawful method for one or more of the following purposes:

(1) To relocate a road or to construct a road necessitated by construction of water supply project.
(2) To establish, extend, enlarge, or improve storm sewer and drainage systems and works, or sewer and septic tank lines and systems.
(3) To establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or to improve drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156 of the General Statutes.
(4) To acquire property for wetlands mitigation. (1955, c. 1195, s. 6; 1969, c. 850; 1971, c. 892, s. 1; 1979, c. 804; 1983, c. 525, s. 5; c. 820, s. 1; 1987 (Reg. Sess., 1988), c. 981, s. 2; 1989, c. 517; 1993 (Reg. Sess., 1994), c. 696, s. 8.1; 1995, c. 509, s. 113; c. 511, s. 1; 1997-436, s. 1; 2000-70, s. 6.)

Editor's Note. —

Session Laws 2000-70, s. 8, effective June 30, 2000, is a severability clause.

Effect of Amendments. — Session Laws 2000-70, s. 6, effective retroactively to July 8, 1991, substituted "authority, to adopt ordinances concerning stormwater management programs designed to protect water quality by controlling the level of pollutants in and the quantity and flow of stormwater, and" for "authority and" in subdivision (14c).

CASE NOTES

Cited in Piedmont Triad Regional Water Auth. v. Sumner Hills, Inc., — N.C. App. —, 524 S.E.2d 375, 2000 N.C. App. LEXIS 7 (2000).

§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.

(a) An authority may establish and revise a schedule of rates, fees, and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by the authority. The rates, fees, and charges established under this subsection are not subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision.

Before an authority sets or revises rates, fees, or other charges for stormwater management programs and structural or natural stormwater and drainage system service, the authority shall hold a public hearing on the matter. At least seven days before the hearing, the authority shall publish notice of the public hearing in a newspaper having general circulation in the area. An authority may impose rates, fees, or other charges for stormwater management programs and stormwater and drainage system service on a person even though the person has not entered into a contract to receive the service.

Rates, fees, and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times:

(1) To pay the cost of maintaining, repairing, and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and

(2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

The fees established under this subsection must be made applicable throughout the service area. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection for stormwater management programs and stormwater and drainage system service may not exceed the authority's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The authority's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(b) Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

(c) In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may do the following in addition to exercising any other remedies which it may have:

(1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges.

(2) At the expiration of 30 days after any rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority.

(3) Specify the order in which partial payments are to be applied when a bill covers more than one service. (1955, c. 1195, s. 8; 1971, c. 892, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 45; 1991, c. 591, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 47; 2000-70, s. 7.)

Editor's Note. — Session Laws 2000-70, s. 8, effective June 30, 2000, is a severability clause.

Effect of Amendments. — Session Laws 2000-70, s. 7, effective retroactively to July 8, 1991, in the fourth paragraph of subsection (a), inserted "stormwater management program and a structural and natural" in the next-to-last sentence and added the last sentence; in the fifth paragraph of subsection (a), inserted "stormwater management programs or separate" in the first sentence, and substituted "stormwater management program and structural" for "single structural" in the second sentence; and inserted "stormwater management programs and" throughout subsection (a).

Chapter 163.

Elections and Election Laws.

SUBCHAPTER II. ELECTION OFFICERS.

Article 4A.

Political Activities by Board of Elections Members.

§ 163-38. Applicability of Article.

This Article applies to members of the State Board of Elections and of each county and municipal board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board. (2000-114, s. 1.)

Editor's Note. — Session Laws 2000-114, s. 2, made this Article effective January 1, 2001.

§ 163-39. Limitation on political activities.

No individual subject to this Article shall:

(1) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.

(2) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum proposals.

(3) Solicit contributions for a candidate, political committee, or referendum committee.

Individual expressions of opinion, support, or opposition not intended for general public distribution shall not be deemed a violation of this Article. Nothing in this Article shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member from making a contribution to a candidate, political committee, or referendum committee. (2000-114, s. 1.)

§ 163-40. Violation may be ground for removal.

A violation of this Article may be a ground to remove a State Board of Elections member under G.S. 143B-16, a county board of elections member under G.S. 163-22(c), or a municipal board of elections member under G.S. 163-280(i). No criminal penalty shall be imposed for a violation of this Article. (2000-114, s. 1.)

§ 163-40.1. Definitions.

The provisions of Article 22A of this Chapter apply to the definition and proof of terms used in this Article. (2000-114, s. 1.)

Cross References. — For definition sections in Article 22A of Chapter 163, see §§ 163-278.6, 163-278.39B, and 163-278.40.

Article 5.

Precinct Election Officials.

§ 163-45. Observers; appointment.

OPINIONS OF ATTORNEY GENERAL

Use of Video Cameras and Cellular Telephones by Observers. — Videotaping of voters by observers designated by a political party pursuant to this section is outside their permissible statutory activities and is inconsistent with the right of voters to vote by secret ballot, but the discreet use of cellular phones is permissible. See opinion of Attorney General to Gary O. Bartlett, Executive Secretary-Director, State Board of Elections, 1998 N.C.A.G. 43 (10/22/98).

SUBCHAPTER III. QUALIFYING TO VOTE.

ARTICLE 7A.

Registration of Voters.

§ 163-82.10. Official record of voter registration.

OPINIONS OF ATTORNEY GENERAL

Duty to Keep Social Security Numbers Confidential. — Social Security account numbers appearing on voter registration application cards maintained in the offices of county boards of elections and obtained since 1974 without the disclosure required by the Privacy Act of 1974 must be kept confidential. See opinion of Attorney General to Sheila Stafford Pope, General Counsel, Secretary of State, N.C. General Assembly, 1999 N.C.A.G. 19 (6/24/99).

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

Primary Elections.

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.

CASE NOTES

The trial court properly refused to declare this section and § 163-323 unconstitutional although, taken together, they created a "loophole" which allowed a candidate to run for a superior court seat and another office on the same election day, regardless of the filing periods; the provisions did not create a benefit to lawyers while denying non-lawyers the equal protection of the law, did not remove the election process from the hands of the voters, and did not allow dual officeholding in violation of Art. VI, § 9 of the North Carolina Constitution, although they did allow dual candidacy. Comer v. Ammons, 135 N.C. App. 531, 522 S.E.2d 77 (1999).

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

ARTICLE 12A.

Precinct Boundaries.

§ 163-132.1. Participation in 2000 Census Redistricting Data Program of the United States Bureau of the Census.

(a) Purpose. — The State of North Carolina shall participate in the 2000 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases), so that the State will receive 2000 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Phase I (Block Boundary Suggestion Program). — The State shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census so that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. The Legislative Services Office shall send preliminary maps produced by the Census Bureau in preparation for the 2000 Census, as soon as practical after the maps are available, to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a physical feature, a current township boundary, or a current municipal boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:

(1) Assist county boards of elections in identifying the precincts with boundaries not shown on the preliminary Census maps and in identifying physical features the county boards may wish to have available for future precinct boundaries;
(2) Place those boundaries and features on maps deemed appropriate by the State Board;
(3) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all physical features the county boards have identified as current or potential precinct boundaries; and
(4) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all other physical features already on 1990 Census maps.

(c) Phase II. — The State shall participate in Phase II of the 2000 Census Redistricting Data Program so that, to the extent practical, the precinct boundaries of all North Carolina counties will appear on the 2000 Census maps or database. The State's effort shall be conducted as follows:

(1) By January 1, 1998, or as soon thereafter as they become available, the Legislative Services Office shall provide the county boards of elections with access, on paper or electronically, to the Census Bureau's maps for Phase II of the Census Redistricting Data Program.
(2) After receiving the maps, the county boards of elections shall designate their precinct lines along the lines the Census Bureau indicates on the maps it will hold as block boundaries for the 2000 Census. Where necessary, the county boards of elections shall alter precincts, including any precincts approved under the provisions of G.S. 163-132.1A, 163-132.2, or 163-132.3 or designated by local act, to conform to lines the Census Bureau indicates it will hold as Census block boundaries as shown on the official block maps to be used for the 2000 Census and to consist only of contiguous territory. The county boards of elections, at a time deemed necessary by the Executive Secretary-Director of the State Board of Elections, shall file with the Legislative Services Office the maps on which they have designated their precincts pursuant to this subsection.
(3) After examining the maps, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of this subsection, with notations as to where those boundaries do not comply with these standards.
(4) If the Executive Secretary-Director determines that the county board of elections has complied, he shall approve the precinct boundaries as filed and those precincts shall be the official precincts.
(5) If the Executive Secretary-Director determines that the county board of elections has not complied, he shall not approve those precinct

boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with 2000 Census block boundaries nearest to the precinct boundaries shown by the county boards on the maps. These altered precincts shall then be the official precincts.

(6) Upon the adoption of a resolution by a county board of elections and instead of altering precinct lines as required by G.S. 163-132.1(c)(5), the Executive Secretary-Director may combine for Census reporting purposes only two or more adjacent precincts of the county into a Combined Reporting Unit, if the Executive Secretary-Director finds that:

a. The boundaries of the Combined Reporting Unit conform with the Census block boundaries as shown on the official block maps to be used in the 2000 Census;
b. The Combined Reporting Unit consists only of contiguous territory;
c. The precincts of which the Combined Reporting Unit consists were bounded as of January 1, 1996, by ridgelines, as certified on official county maps by the county manager of the relevant county, or if there is no county manager the chair of the board of commissioners, and the boundaries failed to comply with subdivision (2) of this subsection only because those ridgelines were unrecognized as Census block boundaries in the 2000 official Census maps;
d. The Combined Reporting Unit does not contain a majority of the territory of more than one township; and
e. To alter those precinct boundaries would result in significant voter dislocation.

If the Executive Secretary-Director recognizes a Combined Reporting Unit for specific precincts, the official boundaries of those individual precincts forming the Combined Reporting Unit shall be those which the Legislative Services Office submitted to the Executive Secretary-Director under subdivision (3) of this subsection.

(7) The Executive Secretary-Director shall file the completed maps with the Census Bureau and request that the Census Bureau provide summaries of 2000 Census data by precinct and Combined Reporting Units.

(d) Freezing of Precincts. —

(1) Notwithstanding the provisions of G.S. 163-132.3, after the Executive Secretary-Director approves the precincts in accordance with subsection (c) of this section and before January 2, 2002, no county board of elections may establish, alter, discontinue, or create any precinct except by division of one precinct into two or more precincts using lines that the Census Bureau has indicated it will use as 2000 Census block boundaries for that division. Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1998 Boundary and Annexation Survey or a subsequent edition of that survey and ending January 2, 2002, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the county board of elections may exercise one of the following options:

a. Direct by resolution that the annexed area is automatically moved into the "city precinct', provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts.

b. Adopt a resolution moving the precinct boundary to a line that the Census Bureau has indicated it will use as a 2000 block boundary.

(2) The Executive Secretary-Director of the State Board of Elections may permit during the freeze a correction to a county's precincts as they were approved pursuant to subsection (c) of this section where one of the following sets of conditions is present:

a. A precinct was designated pursuant to subsection (c) inaccurately, and the United States Bureau of the Census agrees to include the corrected precinct on its database for the 2000 Census.

b. The boundary of a precinct designated pursuant to subsection (c) of this section was subsequently removed by the United States Bureau of the Census as an acceptable feature for a precinct line based upon a determination by the Bureau that the feature did not exist as shown, and the county board of elections agrees by resolution to an alternative boundary for the precinct on a feature the Bureau does find acceptable.

(3) The county board of elections may move a precinct line from a township line to another line the Census Bureau has indicated will be a 2000 block boundary if a Boundary and Annexation Survey issued during the freeze shows that the township line has moved to a location the county board of elections considers unsuitable. This subdivision does not apply if local legislation enacted by the General Assembly governs the relationship between a county's township lines and precinct lines.

(4) The county board of elections shall submit any proposed change made during the freeze under this subsection to the Legislative Services Office, which shall review the proposal and write a letter advising the Executive Secretary-Director of its opinion as to the legal compliance of the proposal. If the proposal complies with the law, the Executive Secretary-Director shall approve the proposal. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director as being in compliance with the provisions of this subsection.

(d1) Right to Postpone Effective Date Until January 1, 2000. — A county board of elections may postpone the effective date of the precincts designated in Phase II until January 1, 2000.

(d2) Special Permission to Postpone Effective Date Until January 1, 2001. — The Executive Secretary-Director may permit a county board of elections to postpone the effective date of precinct lines designated under Phase II until January 1, 2001, upon written application by the county board of elections, if the Executive Secretary-Director finds both of the following:

(1) That the Phase II-designated lines would create a split precinct in 2000 for county commissioner, board of education, judicial, State legislative, or congressional district elections and that a split could be avoided by using the pre-Phase II precinct.

(2) That the county can provide reasonably reliable voter registration data for April and October of 2000 by the Phase II-designated precincts.

In granting an exception under this subsection, the Executive Secretary-Director shall allow an exception only for the precincts that would result in splits and for any adjacent precincts for which pre-Phase II precincts must be used to avoid geographic overlap or discontinuity. Every county board of elections granted an exception under this subsection shall provide to the State

Board of Elections voter registration data for April and October of 2000 by the Phase II-designated precincts.

(e) Municipal and Township Boundaries. — Notwithstanding the provisions of subsections (c) and (d) of this section, the county boards of elections may designate precinct boundaries on municipal or township boundaries that are not designated on the 2000 official Census block maps, according to directives promulgated by the Executive Secretary-Director of the State Board of Elections and adopted to insure that all precincts shall be included on the 2000 Census database.

(f) Additional Rules. — In addition to the directives promulgated by the Executive Secretary-Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 69; 1995, c. 423, s. 2; 1999-227, s. 1; 2000-140, s. 81.)

Effect of Amendments. — Session Laws 2000-140, s. 81, effective July 21, 2000, rewrote subsection (d).

§ 163-132.5. Cooperation of State and local agencies.

The Office of State Budget, Planning,and Management, the Department of Transportation and county and municipal planning departments shall cooperate and assist the Legislative Services Office, the Executive Secretary-Director of the State Board of Elections and the county boards of elections in the implementation of this Article. (1985, c. 757, s. 205(a); 1987, c. 715, s. 4; 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1989, c. 440, s. 3, c. 770, s. 75.3; 2000-140, ss. 93.1(c).)

Effect of Amendments. — Session Laws 2000-140, s. 93.1(c), effective July 1, 2000, substituted "Office of State Budget, Planning, and Management" for "State Budget Office."

Article 13.

General Instructions.

§ 163-153. Access to voting enclosure.

OPINIONS OF ATTORNEY GENERAL

Use of Video Cameras and Cellular Telephones by Observers. — Videotaping of voters by observers designated by a political party is outside their permissible statutory activities and is inconsistent with the right of voters to vote by secret ballot, but the discreet use of cellular phones is permissible. See opinion of Attorney General to Gary O. Bartlett, Executive Secretary-Director, State Board of Elections, 1998 N.C.A.G. 43 (10/22/98).

SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

§ 163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office.

(a) Except as provided in subsection (a1) of this section, a person expecting to be absent from the county in which that person is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under G.S. 163-226(a)(2), 163-226(a)(3a), or 163-226(a)(4) may request an application for absentee ballots, complete the application, and vote under the provisions of this section.

(a1) The excuse requirements of G.S. 163-226(a) do not apply to one-stop voting for elections held on the day of the general elections in November of even-numbered years.

(b) Not earlier than the first business day after the twenty-fifth day before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 5:00 p.m. on the Friday prior to that election, the voter shall appear in person only at the office of the county board of elections, except as provided in subsection (f1) of this section. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in the presence of the chairman, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member, employee, or director of elections of the board shall keep the voter's application for absentee ballots in a safe place, separate and apart from other applications and container-return envelopes. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at that voter's residence address and at the address shown in the application for absentee ballots; and the board shall enter a challenge under G.S. 163-89.

(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. If the voter needs assistance in getting to and from the voting booth and in preparing and marking that voter's ballots or if the voter is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian shall be entitled to assist the voter.

(e1) If a county uses a voting system with retrievable ballots, that county's board of elections may by resolution elect to conduct one-stop absentee voting according to the provisions of this subsection. In a county in which the board has opted to do so, a one-stop voter shall cast the ballot and then shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with a plan approved by the State Board of Elections, which shall include that no additional ballots have been placed in the box or system. Any county board desiring to conduct one-stop voting according to this subsection shall submit a plan for doing so to the State Board of Elections. The State Board shall adopt standards for conducting one-stop voting under this subsection and shall approve any county plan that adheres to its standards. The county board shall adhere to its State Board-approved plan. The plan shall provide that each one-stop ballot shall have a ballot number on it in accordance with G.S. 163-230.1(a2), or shall have an equivalent identifier to allow for retrievability. The standards shall address retrievability in one-stop voting on direct record electronic equipment where no paper ballot is used.

(f) Notwithstanding the exception specified in G.S. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 p.m. on the Friday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during that time.

(g) Notwithstanding any other provision of this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Any site other than the county board of elections office shall be in any building or part of a building that the county board of elections is entitled under G.S. 163-129 to demand and use as a voting place. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the

State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county.

(h) Notwithstanding the provisions of G.S. 163-89(a) and (b), a challenge may be entered against a voter at a one-stop site under subsection (g) of this section or during one-stop voting at the county board office. The challenge may be entered by a person conducting one-stop voting under this section or by another registered voter who resides in the same precinct as the voter being challenged. If challenged at the place where one-stop voting occurs, the voter shall be allowed to cast a ballot in the same way as other voters. The challenge shall be made on forms prescribed by the State Board of Elections. The challenge shall be heard by the county board of elections in accordance with the procedures set forth in G.S. 163-89(e). (1973, c. 536, s. 1; 1975, c. 844, s. 12; 1977, c. 469, s. 1; c. 626, s. 1; 1979, c. 107, s. 14; c. 799, ss. 1-3; 1981, c. 305, s. 2; 1985, c. 600, s. 4; 1987, c. 583, s. 4; 1989, c. 520; 1989 (Reg. Sess., 1990), c. 991, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 53; 1995, c. 243, s. 1; c. 509, ss. 117, 118; 1995 (Reg. Sess., 1996), c. 561, s. 4; 1997-510, s. 2; 1999-455, s. 6; 2000-136, s. 2.)

Editor's Note. —

Session Laws 2000-136, ss. 3(a)-(d), appropriate $250,000 from the General Fund for the 2000-2001 fiscal year to the State Board of Elections to administer a one-time grant-in-aid program to counties to operate multiple One-Stop absentee voting sites. The Board is to develop and issue procedures, no later than July 31, 2000, related to a grant process for grant applications and awards to counties. The procedures should require that counties submit a plan outlining how the funds will be used and should include an application deadline. Criteria for the amount of grant awards shall include county population and voter registration. County grants-in-aid to boards of county commissioners are to be awarded no later than September 15, 2000. Counties are to use funds to offset costs associated with the implementation of G.S. 163-227.2(g) and not to supplant funds previously budgeted for county boards of elections.

Effect of Amendments. —

Session Laws 2000-136, s. 2, effective July 17, 2000, added the last four sentences in subsection (g).

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

Article 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

§ 163-275. Certain acts declared felonies.

CASE NOTES

Quoted in Aycock v. Padgett, 134 N.C. App. 164, 516 S.E.2d 907 (1999).

Article 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

§ 163-278.5. Scope of Article; severability.

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision. (1999-31, s. 6(a); 2000-140, s. 82.)

Effect of Amendments. — Session Laws 2000-140, s. 82, effective July 21, 2000, inserted "and to North Carolina referenda," added "or to non-North Carolina referenda," and added "or North Carolina referenda."

§ 163-278.13B. Limitation on fund-raising during legislative session.

(a) Definitions. — For purposes of this section:

(1) "Limited contributor" means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120-47.1(7), or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) "Limited contributee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly.

(3) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is "made" during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is "accepted" during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. — While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a limited contributor or relay to the limited contributor the limited contributee's solicitation of a contribution.

It shall not be deemed a violation of this section for a limited contributee to serve on a board or committee of an organization that makes a solicitation of a limited contributor as long as that limited contributee does not directly participate in the solicitation and that limited contributee does not directly benefit from the solicitation.

(c) Prohibited Contributions. — While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee or the real or purported agent of a limited contributee prohibited from solicitation by subsection (b) of this section shall accept a contribution from a limited contributor.

(5) No limited contributor shall solicit a contribution from any individual or political committee on behalf of a limited contributee. This subdivision does not apply to a limited contributor soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(d) Exception. — The provisions of this section do not apply with regard to a limited contributee during the three weeks prior to the day of a second primary if that limited contributee is a candidate who will be on the ballot in that second primary.

(e) Prosecution. — A violation of this section is a Class 2 misdemeanor. (1997-515, s. 9(b); 1999-31, s. 5(d); 1999-453, s. 6(a); 2000-136, s. 1.)

Effect of Amendments. — Session Laws 2000-136, s. 1, effective July 17, 2000, deleted "or a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly" following "for the General Assembly" in subdivision (a)(2); in subdivision (b)(2), inserted "solicit a contribution from a limited contributor or" and substituted "limited" for "prohibited" twice; added the last paragraph in subsection (b); and inserted "or the real or purported agent of a limited contributee prohibited from solicitation by subsection (b) of this section" in subdivision (c)(4).

CASE NOTES

This section is unconstitutional as applied to independent political committees accepting contributions on behalf of candidates; while this section was enacted for a compelling governmental interest, i.e., the prevention of corruption or the appearance of corruption among both incumbents and challengers while the General Assembly is in session, the remedy set forth was not narrowly tailored and the court, therefore, properly severed "political committee" from the definition of "limited contributee." Winborne v. Easley, 136 N.C. App. 191, 523 S.E.2d 149 (1999).

Constitutionality as to Individual Challenger. — Because a compelling government interest was addressed in amending this section to include challengers, the section is narrowly tailored in its application to challengers, as well as incumbents; plaintiff who made no showing that the section invidiously discriminates against him as a challenger unsuccessfully challenged its constitutionality as applied to him. Winborne v. Easley, 136 N.C. App. 191, 523 S.E.2d 149 (1999).

The constitutionality of this section was properly before the court, although not directly raised, where plaintiff sought a means to obtain contributions from lobbyists and their political committees during the legislative session. Winborne v. Easley, 136 N.C. App. 191, 523 S.E.2d 149 (1999).

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The Federal Election Campaign Act (FECA) of 1971 preempts this section prohibiting a member of the General Assembly from accepting contributions from lobbyists while the General Assembly is in session if the member is a candidate for federal office. See opinion of Attorney General to Ms. Yvonne Southerland, Deputy Director, State Board of Elections, 1998 N.C.A.G. 22 (5/4/98).

Part 1A. Disclosure Requirements for Media Advertisements.

§ 163-278.39A. Disclosure requirements for television and radio advertisements supporting or opposing the nomination or election of one or more clearly identified candidates.

(a) Expanded Disclosure Requirements. — Any political campaign advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section. To the extent that it provides the same information required by G.S. 163-278.39, a statement made pursuant to this section satisfies the requirements of G.S. 163-278.39 for the same advertisement.

(b) Disclosure Requirements for Television. —

(1) Candidate advertisements on television. — Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is________") [name of candidate], candidate for [name of office], and I (or "my campaign________") sponsored this ad." This subdivision applies only to an advertisement that mentions the name

of, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on television. — Television advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on television. — Television advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office]." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(4) Advertisements on television by an individual. — Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office]."

(5) Advertisements on television by another sponsor. — Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad."

(6) All advertisements on television. — In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the duration of the disclosure statement.

(c) Disclosure Requirements for Radio. —

(1) Candidate advertisements on radio. — Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is________") [name of candidate], candidate for [name of office], and this ad was paid for (or "sponsored" or "furnished") by [name of candidate campaign committee that paid for the advertisement]." This subdivision applies only to an advertisement that mentions the name of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on radio. — Radio advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political party]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on radio. — Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political action committee] political action committee." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required by G.S. 163-278.7(b)(1).

(4) Advertisements on radio by an individual. — Radio advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me."

(5) Advertisements on radio by another sponsor. — Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad."

(d) Placement of Disclosure Statement in Television and Radio Advertisements. — In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. But any visual disclosure legend shall be at least 32 scan lines in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(e) Choice of Supporting or Opposing a Candidate. — In its oral disclosure statement, a sponsoring political party organization, political action committee, individual, or other noncandidate sponsor shall choose either to identify an advertisement as supporting or opposing the nomination or election of one or more clearly identified candidates.

(e1) Joint Sponsors. — If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate is the sponsor, at least one of the candidates shall be the disclosing individual.

(f) Legal Remedy. — Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements:

(1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

(3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to the Communications Act of 1934. — Television advertisements by a sponsor supporting or opposing the nomination or election of one or more clearly identified candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with disclosure requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, and G.S. 163-278.39(a)(1). The size of those visual legends is determined by G.S. 163-278.39(b), which satisfies requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(h) No Additional Liability of Television or Radio Outlets. — Television or radio outlets shall not be liable under this section for carriage of political advertisements that fail to include the disclosure requirements provided for in this section.

(i) No Criminal Liability. — Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability. (1999-453, s. 2(a); 2000-140, ss. 83, 84.)

Effect of Amendments. — Session Laws 2000-140, ss. 83, 84, effective July 21, 2000, in subsection (a), substituted "Any political" for "In addition to the basic disclosure requirements in G.S. 163-278.39, any political" and added the last sentence; and in subsection (i), deleted "for any person" following "criminal liability."

Article 22B.

Appropriations from the North Carolina Political Parties Financing Fund.

§ 163-278.41. Appropriations in general election years and other years.

OPINIONS OF ATTORNEY GENERAL

Regarding the designation of funds for political parties by 1998 taxpayers, where a third party was erroneously included on the income tax forms, see opinion of Attorney General to Gary O. Bartlett, Executive Secretary-Director, State Board of Elections, N.C. General Assembly, 1999 N.C.A.G. 16 (6/14/99).

SUBCHAPTER X. ELECTION OF SUPERIOR COURT JUDGES.

Article 25.

Nomination and Election of Superior Court Judges.

§ 163-323. Notice of candidacy.

CASE NOTES

The trial court properly refused to declare this section and § 163-106 unconstitutional although, taken together, they created a "loophole" which allowed a candidate to run for a superior court seat and another office on the same election day, regardless of the filing periods; the provisions did not create a benefit to lawyers while denying non-lawyers the equal protection of the law, did not remove the election process from the hands of the voters, and did not allow dual officeholding in violation of Art. VI, § 9 of the North Carolina Constitution, although they did allow dual candidacy. Comer v. Ammons, 135 N.C. App. 531, 522 S.E.2d 77 (1999).

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 4.

Sentencing Commission.

Article 4.

Sentencing Commission.

§ 164-37. Membership; chairman; meetings; quorum.

The Commission shall consist of 30 members as follows:

(1) The Chief Justice of the North Carolina Supreme Court shall appoint a sitting or former Justice or judge of the General Court of Justice, who shall serve as Chairman of the Commission;
(2) The Chief Judge of the North Carolina Court of Appeals, or another judge on the Court of Appeals, serving as his designee;
(3) The Secretary of Correction or his designee;
(4) The Secretary of Crime Control and Public Safety or his designee;
(5) The Chairman of the Parole Commission, or his designee;
(6) The President of the Conference of Superior Court Judges or his designee;
(7) The President of the District Court Judges Association or his designee;
(8) The President of the North Carolina Sheriff's Association or his designee;
(9) The President of the North Carolina Association of Chiefs of Police or his designee;
(10) One member of the public at large, who is not currently licensed to practice law in North Carolina, to be appointed by the Governor;
(11) One member to be appointed by the Lieutenant Governor;
(12) Three members of the House of Representatives, to be appointed by the Speaker of the House;
(13) Three members of the Senate, to be appointed by the President Pro Tempore of the Senate;
(14) The President Pro Tempore of the Senate shall appoint the representative of the North Carolina Community Sentencing Association that is recommended by the President of that organization;
(15) The Speaker of the House of Representatives shall appoint the member of the business community that is recommended by the President of the North Carolina Retail Merchants Association;
(16) The Chief Justice of the North Carolina Supreme Court shall appoint the criminal defense attorney that is recommended by the President of the North Carolina Academy of Trial Lawyers;
(17) The President of the Conference of District Attorneys or his designee;
(18) The Lieutenant Governor shall appoint the member of the North Carolina Victim Assistance Network that is recommended by the President of that organization;
(19) A rehabilitated former prison inmate, to be appointed by the Chairman of the Commission;

(20) The President of the North Carolina Association of County Commissioners or his designee;
(21) The Governor shall appoint the member of the academic community, with a background in criminal justice or corrections policy, that is recommended by the President of The University of North Carolina;
(22) The Attorney General, or a member of his staff, to be appointed by the Attorney General;
(23) The Governor shall appoint the member of the North Carolina Bar Association that is recommended by the President of that organization.
(24) A member of the Justice Fellowship Task Force, who is a resident of North Carolina, to be appointed by the Chairman of the Commission.
(25) The President of the Association of Clerks of Superior Court of North Carolina, or his designee.
(26) A representative of the Department of Juvenile Justice and Delinquency Prevention.

The Commission shall have its initial meeting no later than September 1, 1990, at the call of the Chairman. The Commission shall meet a minimum of four regular meetings each year. The Commission may also hold special meetings at the call of the Chairman, or by any four members of the Commission, upon such notice and in such manner as may be fixed by the rules of the Commission. A majority of the members of the Commission shall constitute a quorum. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 2; 1993, c. 253, s. 5.1; c. 321, s. 200.1; c. 535, s. 4; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418 s. 2; 1997-443, s. 18.6(a); 1998-170, s. 1; 1998-202, s. 10(f); 2000-137, s. 4(kk).)

Effect of Amendments. —
Session Laws 2000-137, s. 4(kk), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subdivision (26).

§ 164-40. Correction population simulation model; Department of Juvenile Justice and Delinquency Prevention facilities population simulation model.

(a) The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

(b) The Commission shall develop a Department of Juvenile Justice and Delinquency Prevention facilities population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the dispositional laws set forth in Chapter 7B of the General Statutes, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Department of Juvenile Justice and Delinquency Prevention, in second priority to the work of the Commission. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 1998-202, s. 10(b); 2000-137, s. 4(ii).)

Effect of Amendments. —

Session Laws 2000-137, s. 4(ii), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in the catchline and twice in subsection (b), and made a stylistic change.

§ 164-43. Priority of duties; reports; continuing duties.

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established under G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in this State to ensure that sentences and dispositions remain uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing and dispositional practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model and the Department of Juvenile Justice and Delinquency Prevention facilities population simulation model developed under G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated under G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment or dispositional level for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model or the Department of Juvenile Justice and Delinquency Prevention facilities population simulation model to the provisions of the bill. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 4; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s.1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 1998-202, s. 10(d); 2000-137, s. 4(jj).)

Effect of Amendments. —

Session Laws 2000-137, s. 4(jj), effective July 20, 2000, substituted "Department of Juvenile Justice and Delinquency Prevention" for "Office of Juvenile Justice" in subsections (d) and (h).

Chapter 166A.

North Carolina Emergency Management Act.

Article 1.

North Carolina Emergency Management Act of 1977.

§ 166A-6.1. Emergency planning; charge.

(a) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety an annual fee of at least thirty thousand dollars ($30,000) for each fixed nuclear facility which is located within this State or has a Plume Exposure Pathway Emergency Planning Zone of which any part is located within this State. This fee is to be applied to the costs of planning and implementing emergency response activities as are required by the Federal Emergency Management Agency for the operation of nuclear facilities. Said fee is to be paid no later than July 31 of each year. This minimum fee may be increased from time to time as the costs of such planning and implementation increase. Such increases shall be by agreement between the State and the licensees or operators of the fixed nuclear facilities.

(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety, for the use of the Division of Radiation Protection of the Department of Environment and Natural Resources, an annual fee of thirty-six thousand dollars ($36,000) for each fixed nuclear facility that is located within this State or has a Plume Exposure Pathway Emergency Planning Zone of which any part is located within this State. This fee shall be applied to the costs of planning and implementing emergency response activities as are required by the Federal Emergency Management Agency for the operation of nuclear facilities. This fee is to be paid no later than July 31 of each year.

(c) The fees imposed by this section do not revert at the end of a fiscal year. The amount of fees carried forward from one fiscal year to the next shall be taken into consideration in determining the fee to be assessed each fixed nuclear facility under subsection (a) in that fiscal year. (1981, c. 1128, ss. 1, 2; 1983, c. 622, ss. 1-3; 1989, c. 727, s. 219(42); 1989 (Reg. Sess., 1990), c. 964, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 18; 1997-443, s. 11A.123; 2000-109, s. 6.)

Effect of Amendments. — Session Laws 2000-109, s. 6, effective July 1, 2000, in subsection (b), substituted "Division of Radiation Protection of the Department of Environment and Natural Resources" for "Radiation Protection Division of the Department of Environment and Natural Resources," substituted "thirty-six thousand dollars ($36,000)" for "eighteen thousand dollars ($18,000)," and substituted "that is located" for "which is located" in the first sentence, and substituted "This fee" for "Said fee" at the beginning of the last sentence.

Chapter 168.

Handicapped Persons.

Article 1.

Rights.

§ 168-1. Purpose and definition.

The State shall encourage and enable handicapped persons to participate fully in the social and economic life of the State and to engage in remunerative employment. The definition of "handicapped persons" shall include those individuals with physical, mental and visual disabilities. For the purposes of this Article the definition of "visually impaired" in G.S. 111-11 shall apply. (1973, c. 493, s. 1; 2000-121, s. 33.)

Effect of Amendments. — Session Laws 2000-121, s. 33, effective July 14, 2000, substituted "impaired" for "handicapped" near the end of the section.

§ 168-5. Traffic and other rights of persons using certain canes.

The driver of a vehicle approaching a visually impaired pedestrian who is carrying a cane predominantly white or silver in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such pedestrian. (1973, c. 493, s. 1; 2000-121, s. 34.)

Effect of Amendments. — Session Laws 2000-121, s. 34, effective July 14, 2000, substituted "impaired" for "handicapped" near the beginning of the section.

Chapter 168A.

Persons With Disabilities Protection Act.

§ 168A-1. Title.

CASE NOTES

Applied in Simmons v. Chemol Corp., — N.C. App. —, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000).

§ 168A-2. Statement of purpose.

CASE NOTES

Construction with Other Laws. — The Employment Act, enacted in 1977, and The Handicapped Act, enacted in 1985, although enacted at different times, relate to the same subject matter, employment discrimination against handicapped persons, and must be construed together to ascertain legislative intent. McCullough v. Branch Banking & Trust Co., — N.C. App. —, 524 S.E.2d 569, 2000 N.C. App. LEXIS 17 (2000).

§ 168A-3. Definitions.

CASE NOTES

Construction with Other Law. — Plaintiff was required to have commenced proceedings under state law before commencing proceedings with the EEOC where the North Carolina Persons With Disabilities Protection Act (NCPDPA) provided plaintiff with a remedy under state law. Metts v. North Carolina Dep't of Revenue, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 2567 (E.D.N.C. January 9, 2000).

Plaintiff's rhinitis was not a "physical impairment" under this section because his medical records established that his condition was temporary; nor did his condition render him "handicapped" under this section. Simmons v. Chemol Corp., — N.C. App. —, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000).

A discussion of reasonable accommodations under this section is irrelevant where plaintiff's claim is based on wrongful discharge in violation of public policy under § 143-422.2. Simmons v. Chemol Corp., — N.C. App. —, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000).

§ 168A-11. Civil action.

CASE NOTES

Stated in Simmons v. Chemol Corp., — N.C. App. —, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000).

Cited in Metts v. North Carolina Dep't of Revenue, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 2567 (E.D.N.C. January 9, 2000).

Constitution of North Carolina

ARTICLE I

DECLARATION OF RIGHTS

Section 1. The equality and rights of persons.

Legal Periodicals. —
For article discussing the rise and decline of the North Carolina Abortion Fund, see 22 Campbell L. Rev. 119 (1999).

Sec. 6. Separation of powers.

Legal Periodicals. —
For article, "A Study in Separation of Powers: Executive Power in North Carolina," see 77 N.C.L. Rev. 2049 (1999).

CASE NOTES

I. In General.
II. Delegation of Legislative Power.

I. IN GENERAL.

The legislature may constitutionally provide for a "de novo" review of the quasi-judicial decision of an agency; therefore, review of a civil service board's decision by the superior court under the "de novo" standard did not violate this section nor impermissibly allow the judicial branch to substitute its judgment for that of the city manager on a personnel matter where the question before the superior court was not whether the employee should have been terminated rather than demoted, suspended, or transferred, but whether the action of the employee's supervisor was "justified." Jacobs v. City of Asheville, — N.C. App. —, 528 S.E.2d 905, 2000 N.C. App. LEXIS 430 (2000).

II. DELEGATION OF LEGISLATIVE POWER.

Delegation of Power Upheld. —
Commissioner's promulgation of 11 N.C.A.C. 12.0319, prohibiting subrogation provisions in life or accident and health insurance contracts, supported by § 58-2-40 (right to limit practices injurious to the public) and § 58-50-15(a) (prohibiting provisions less favorable to the insured), did not exceed his statutory authority, even though it may change state substantive law, and did not amount to an unconstitutional delegation of legislative powers, because statutory provisions (§§ 58-2-40, 58-51-15, and 58-50-15) and judicial review (available under § 150B, et seq.) offer adequate procedural safeguards and support the delegation of power to the Commissioner. In re 11 N.C.A.C 12.0319, 134 N.C. App. 22, 517 S.E.2d 134 (1999), cert. denied, appeal dismissed, 351 N.C. 105, — S.E.2d — (1999).

OPINIONS OF ATTORNEY GENERAL

Legislators Precluded from Serving on the Board of North Carolina Partnership for Children, Inc. — This section precludes legislators from serving as members of a private, non-profit corporation where the corporation is "a special instrumentality of government" created to implement specific legislation. See opinion of Attorney General to The Honorable John R. Gamble, Jr., N.C. House of Representatives, 1998 N.C.A.G. 34 (7/30/98).

Sec. 14. Freedom of speech and press.

Legal Periodicals. —
For article, "A Kantian Right of Publicity," see 1999 Duke L.J. 383.

CASE NOTES

I. General Consideration.
II. Unprotected Speech.

I. GENERAL CONSIDERATION.

Cited in Edwards v. City of Goldsboro, 178 F.3d 231 (4th Cir. 1999).

II. UNPROTECTED SPEECH.

Plaintiff's free speech claim failed where her communication focused on her personal trials and tribulations and relief sought therefor and, thus, essentially addressed a private grievance rather than a public concern, and where plaintiff failed to adduce evidence that she suffered any tangible job detriment in retaliation for her complaints. DeWitt v. Mecklenburg County, 73 F. Supp. 2d 589 (W.D.N.C. 1999).

Sec. 16. Ex post facto laws.

CASE NOTES

Application of felony murder rule in automobile accident did not violate prohibition against ex post facto laws. State v. Jones, 133 N.C. App. 448, 516 S.E.2d 405 (1999).

Conviction of Murder While Committing Felonious Child Abuse with the Use of a Deadly Weapon, Hands — The court rejected the defendant's ex post facto objections and upheld the defendant's conviction, under § 14-17, of murder while committing felonious child abuse, in violation of § 14-318.4, with the use of a deadly weapon, her hands, although this theory had not, at the time of the victim's death, been used to support a first degree murder conviction resulting from the use of the hands as deadly weapons. State v. Krider, — N.C. App. —, 530 S.E.2d 569, 2000 N.C. App. LEXIS 541 (2000).

Sec. 18. Courts shall be open.

CASE NOTES

I. General Consideration.
II. Access to the Courts.
V. Speedy Criminal Trials.

I. GENERAL CONSIDERATION.

Jury Instruction. — Pattern jury instruction used by trial court was internally consistent and meaningful, and did not misuse the term "extenuating," nor define the term "mitigating circumstance" in such a way as to confuse jurors or violate the defendant's due process and fundamental fairness rights. State v. Peterson, 350 N.C. 518, 516 S.E.2d 131 (1999), cert. denied, — U.S. —, 120 S. Ct. 1181, 145 L. Ed. 2d 1087 (2000).

Cited in State v. McNeil, 350 N.C. 657, 518 S.E.2d 486 (1999), cert. denied, — U.S. —, 120 S. Ct. 1432, 146 L. Ed. 2d 321 (2000); State v. Cheek, 351 N.C. 48, 520 S.E.2d 545 (1999), cert. denied, — U.S. —, 120 S. Ct. 2694, — L. Ed. — (2000); Clark v. Visiting Health Professionals, Inc., — N.C. App. —, 524 S.E.2d 605, 2000 N.C. App. LEXIS 63 (2000).

II. ACCESS TO THE COURTS.

Sealing of Peer Review Materials. — The qualified constitutional right on the part of the public to attend civil court proceedings did not preclude the trial court, under the facts presented, from giving effect to the protections of § 131E-95 by sealing peer review materials and closing court proceedings concerning those materials. Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 515 S.E.2d 675 (1999), cert. denied, — U.S. —, 120 S. Ct. 1452, 146 L. Ed. 2d 337 (2000).

V. SPEEDY CRIMINAL TRIALS.

Defendant was not deprived of his constitutional right to a speedy trial, etc. — Defendant was not denied his constitutional right to a speedy trial, where delay was not the result of prosecutorial willfulness or neglect, and where defendant did not assert his right to a speedy trial until three years after his arrest and failed to show that he was prejudiced by the delay. State v. Lundy, 135 N.C. App. 13, 519 S.E.2d 73 (1999).

Trial court properly denied defendant's motion to dismiss on the grounds that the State violated his constitutional right to a speedy trial where he failed to show that the delay of his second trial was due to the neglect or willfulness of the prosecution, where he failed to assert his right in the five-year interval, and where his claim that the delay resulted in his inability to locate key witnesses was undermined by his failure to call all his witnesses in the first trial. State v. Spinks, 136 N.C. App. 153, 523 S.E.2d 129 (1999).

Sec. 19. Law of the land; equal protection of the laws.

Legal Periodicals. — For article discussing the rise and decline of North Carolina Abortion Fund, see 22 Campbell L. Rev. 119 (1999).

CASE NOTES

I. GENERAL CONSIDERATION.

Applied in State v. Brogden, — N.C. App. —, 528 S.E.2d 391, 2000 N.C. App. LEXIS 423 (2000); DOT v. Rowe, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 615 (June 20, 2000).

Cited in State v. McNeil, 350 N.C. 657, 518 S.E.2d 486 (1999), cert. denied, — U.S. —, 120 S. Ct. 1432, 146 L. Ed. 2d 321 (2000); Brown v. City of Greensboro, — N.C. App. —, 528 S.E.2d 588, 2000 N.C. App. LEXIS 271 (2000); State v. Doisey, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 779 (July 5, 2000).

II. DUE PROCESS AND THE "LAW OF THE LAND".

DWI Seizure Statutes were held constitutional in spite of a "law of the land" challenge, indicating that these statutes have a legitimate objective — keeping impaired drivers and their cars off of the roads — and that the means chosen to further the goals — seizing the cars, even when they belong to people other than the drivers — is directly related to said objective. State v. Chisholm, 135 N.C. App. 578, 521 S.E.2d 487 (1999).

Definition of Term in Criminal Statute. — Failure to define the term "deadly weapon" in § 14-17 does not result in the statute being unconstitutionally vague. Furthermore, because North Carolina cases provide adequate notice of what constitutes a deadly weapon, defendant has not been deprived of due process. State v. Jones, 133 N.C. App. 448, 516 S.E.2d 405 (1999).

No Due Process Right of Entitlement in Terminable at Will Contract. — Plaintiffs who made no claim that they were exempted from the employment-at-will rule other than that their employment was subject to a general order allowing appeal to a Termination Review Board had no property interest in the employment which could form the basis for a denial of due process. Buchanan v. Hight, 133 N.C. App. 299, 515 S.E.2d 225 (1999).

Jury Instructions. — While trial court's jury instructions may have been confusing initially, the court ultimately set forth the required elements as to felonious assault with a deadly weapon inflicting serious injury and, therefore, did not violate the defendant's constitutional rights under this section and N.C. Const., Art. I, §§ 23 and 27. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Pattern jury instruction used by trial court was internally consistent and meaningful, and did not misuse the term "extenuating," nor define the term "mitigating circumstance" in such a way as to confuse jurors or violate defendant's due process and fundamental fairness rights. State v. Peterson, 350 N.C. 518, 516 S.E.2d 131 (1999), cert. denied, — U.S. —, 120 S. Ct. 1181, 145 L. Ed. 2d 1087 (2000).

Prosecutor's Comments. — Prosecutor's arguments, including statements comparing defendant's cozy life in prison and his numerous protections under the Constitution with victims' lack of opportunities, was unlikely to have influenced the jury's sentencing recommendations and, therefore, did not deny the defendant his constitutional due process rights. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

III. EQUAL PROTECTION.

The defendant/highway patrol was not entitled to assert the doctrine of sovereign immunity as a defense to plaintiffs' claim that the highway patrol violated the decedent's constitutional rights by promoting or knowing about "the I-Troop's pattern and practice of racially-influenced traffic stops of Black motorists" because this claim alleged a violation of the decedent's right to equal protection under the North Carolina Constitution. Estate of Fennell v. Stephenson, — N.C. App. —, 528 S.E.2d 911, 2000 N.C. App. LEXIS 428 (2000).

Disparate Application of Antisubrogation Rule Upheld. — Antisubrogation rule served a legitimate purpose, and the existence of a prior superior court decision restraining the N.C. Department of Insurance from enforcing anti-subrogation rule against one insurer alone constituted a rational basis for the department's disparate treatment of similarly situated insurers; hence, no equal protection violation existed. In re 11 N.C.A.C 12.0319, 134 N.C. App. 22, 517 S.E.2d 134 (1999), cert. denied, appeal dismissed, 351 N.C. 105, — S.E.2d — (1999).

Equal protection clause was not violated when court applied felony murder rule and punished defendant more severely by sentencing him to death because more victims were harmed as authorized by §§ 15A-1340.16(d)(8) and 15A-2000(e)(11). State v. Jones, 133 N.C. App. 448, 516 S.E.2d 405 (1999).

Illustrative Cases — Summary judgment was inappropriate on plaintiffs' equal protection claim which alleged that the defendants violated this section by asserting sovereign immunity in their case while customarily waiving it for similarly situated individuals. The city failed to offer an explanation as to how its differing treatment of tort claimants was based on differences between the claimants and how these differences were rationally related to a legitimate governmental objective. Dobrowolska v. Wall, — N.C. App. —, 530 S.E.2d 590, 2000 N.C. App. LEXIS 539 (2000).

IV. RIGHTS OF DEFENDANTS.

A. In General.

Prosecutor's Statements. — The defendant constitutional rights under Article I, Sections 19, 23, and 27 of the North Carolina Constitution were not violated by the prosecution's argument in opposition to the "catchall" mitigating circumstance of § 15A-2000(f) that the jury should not give any mitigating value to the fact that his accomplice was not sentenced to death where the prosecution did not imply that the accomplice's sentence could be treated as a nonstatutory aggravating circumstance. State v. Roseboro, 351 N.C. 536, 528 S.E.2d 1 (2000).

Jury Instructions. — Defendant was not deprived of his constitutional rights where no conflict existed between the "Issues and Recommendation as to Punishment" form and the oral instructions given by the trial court. State v. Peterson, 350 N.C. 518, 516 S.E.2d 131 (1999), cert. denied, — U.S. —, 120 S. Ct. 1181, 145 L. Ed. 2d 1087 (2000).

Pecuniary Gain Instruction Not Violative of Constitutional Rights. — Jury instruction regarding capital felony committed for pecuniary gain to support submission of aggravating circumstance under § 15A-2000(e)(6) did not violate defendant's due process and fair trial rights under this section and N.C. Const., Art. I, § 23; even though gun may have been intended for his personal use, it had pecuniary value. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Single Comprehensive Mitigating Circumstances Instruction Allowed in Murder Trial — The trial court did not err by denying defendant's request for separate instructions on each of his three alleged mental impairments under § 15A-2000(f)(6) or by giving a single instruction combining all of the mental impairments into a single mitigating circumstance. The trial court's instruction specifically referred to each of the alleged mental disorders—his "personality disorder," "borderline range of intelligence," and "long-term, chronic and severe abuse of crack-cocaine at and around the time of the offenses"—and instructed the jury to consider whether one or all of them impaired his capacity to appreciate the criminality of his conduct or to conform his conduct to the law. State v. Roseboro, 351 N.C. 536, 528 S.E.2d 1 (2000).

B. Composition of Juries.

Trial Judge Has Discretion to Dismiss Jurors Whose Answers Conflict. — The trial court did not abuse its discretion in violation of Article I, Sections 19, 23, and 27 of the North Carolina Constitution and § 15A-1212 by excusing for cause a juror who told the prosecutor that he had reasonably strong religious beliefs about the death penalty which he had held for a long period of time; that, because of those beliefs, it would be hard for him to find the death penalty warranted under any circumstances; that his religious beliefs would substantially impair his duty as a juror to recommend to the trial court a punishment of death if the evidence warranted it; but that he could follow the law and "go by which one I thought was right, whoever proved the most." State v. Greene, 351 N.C. 562, 528 S.E.2d 575 (2000).

C. Double Jeopardy.

Continuing Offense Precludes Several Violations. — Defendant's conviction of two counts of keeping and maintaining a dwelling for the use of a controlled substance, where no evidence indicated a termination and subsequent resumption of drug trafficking, was erroneous and constituted double jeopardy. State v. Grady, — N.C. App. —, 524 S.E.2d 75, 2000 N.C. App. LEXIS 12 (2000).

Evidence Must Be Identical. — Although defendant's husband did not fully penetrate 11-year-old victim until his third attempt, each separate act of intercourse was complete and sufficient to sustain an indictment for first degree rape, and no double jeopardy occurred when defendant/wife was convicted as an aider and abettor for two counts of attempted rape and one count of rape. State v. Owen, 133 N.C. App. 543, 516 S.E.2d 159 (1999), cert. denied, 351 N.C. 117, — S.E.2d — (1999).

Prosecution of a Substantive Criminal Offense Following an Adjudication of Criminal Contempt. — Where the prohibition in a protective order met the legal elements necessary for assault on a female under § 14-33(b)(2), the defendant's prosecution on this charge, subsequent to his being held in contempt for violating the protective order, was barred by the Double Jeopardy Clause and his conviction for assault on a female was vacated. State v. Gilley, 135 N.C. App. 519, 522 S.E.2d 111 (1999).

Defendant's convictions for kidnapping, nonfelonious breaking or entering, and domestic criminal trespass did not violate the Double Jeopardy Clause where several elements contained within the applicable statutory language were not set out in the subject protective order, the violation of which defendant had previously been held in contempt. State v. Gilley, 135 N.C. App. 519, 522 S.E.2d 111 (1999).

Plea of No Contest. — Defendant waived the right to assert a double jeopardy violation by entering pleas of guilty to obtaining property by false pretense and no contest to accessing computers. State v. Hughes, 136 N.C. App. 92, 524 S.E.2d 63 (1999).

Double Jeopardy Not Shown. — Defendant's burglary conviction did not violate double jeopardy principles where he was also convicted for first degree felony-murder. There was no inconsistency in the jury finding a lack of premeditation and deliberation required for first degree murder but finding the requisite intent to murder to satisfy a burglary conviction. State v. Blyther, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 619 (June 20, 2000).

E. Time to Prepare Defense.

Denial of Continuance Held Improper. — The defendant was entitled to a new trial because the court's denials of his repeated motions for a continuance resulted in a violation of his constitutional rights to effective assistance of counsel, to confront his accusers, and to due process of law. Defendant's counsels had only thirty-four days to prepare for a complex, bifurcated capital case, involving multiple incidents in multiple locations over a two-day period, which they took over from another attorney who had done little other than filing pretrial motions while trying to persuade the defendant to accept a plea bargain. No evidence existed that any witness interviews had been performed; the orders based on the trial court's rulings on pretrial motions had not been prepared; and a jury questionnaire was not submitted for distribution to prospective jurors. State v. Rogers, — N.C. —, 529 S.E.2d 671, 2000 N.C. LEXIS 430 (2000).

G. Identification of Defendant.

Brevity and Reliability. — Where testifying witness observed defendant during the day, from a short distance, and long enough to notice his unseasonable clothing, the witness's identification of him was not too brief and therefore not inherently incredible, and its admittance into evidence was not violative of his due process rights under this section and N.C. Const., Art. I, §§ 23 and 27. State v. Parker, 350 N.C.

411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

H. Self-Incrimination.

Court's denial of defendant's motion to suppress in-custody inculpatory statements he gave to law enforcement officers did not violate his constitutional rights. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Confession Held Voluntary — The granting of defendant's request to see his girlfriend and the mother of his child did not render his confession involuntary where the investigators's statements that they would attempt to contact the women were made only in response to defendant's request, where there was no evidence that investigators used the request as an inducement to obtain his confession, where investigators advised defendant that the police had no control over whether the women came to the station, where defendant himself stated that his confession was not thereby induced, and where the request had no relation to relief from the charges he faced. State v. Wallace, 351 N.C. 481, 528 S.E.2d 326 (2000).

Statements Deemed Voluntary. — The trial court's findings of fact, not specifically excepted to by the defendant, fully supported its conclusions of law that defendant's statements to the police were freely, voluntarily and understandingly made and that none of the defendant's State constitutional rights were violated by his arrest, detention, interrogation or statements. State v. Cheek, 351 N.C. 48, 520 S.E.2d 545 (1999), cert. denied, — U.S. —, 120 S. Ct. 2694, — L. Ed. — (2000).

VII. TAKING OF PRIVATE PROPERTY FOR PUBLIC USE.

E. Illustrative Cases.

Relocation of Easement. — Where no written contract existed regarding an easement's relocation and city council had not authorized this relocation, the appellate court took jurisdiction, even though defendants failed to file a timely appeal and found that placement of a sewer line outside an easement constituted a taking as a matter of law. Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

Award of Interest. — Where city's placement of sewer line outside of easement constituted a taking without prior payment of compensation, plaintiff was entitled to an award of 14% compound interest, based on a fair and reasonable rate of return for a prudent investor. Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

IX. MISCELLANEOUS RIGHTS.

No Constitutional Right to Erosion Control. — Plaintiffs' claim that hardened structure rules promulgated by defendants effected a taking of property without just compensation and violated § 113A-128 of the Coastal Area Management Act were properly dismissed, because plaintiffs failed to cite any persuasive authority for the proposition that a littoral or riparian landowner has a right to erect hardened structures in statutorily designated areas of environmental concern to protect their property from erosion or migration. Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 217, 517 S.E.2d 406 (1999).

Hardened structure rules, codified at 15A NCAC 7H.0308 and 7H.0301, which prevent permanent structures from being erected in environmentally sensitive areas which may adversely impact the value of the land and adjacent properties, as well as the right to public enjoyment of such areas, are clearly rationally related to legitimate government interests and, therefore, did not violate plaintiffs' equal protection rights. Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 217, 517 S.E.2d 406 (1999).

XI. ILLUSTRATIVE CASES.

A. Statutes, Proceedings, etc., Upheld.

Anti-subrogation Rule. — Insurance Commissioner's anti-subrogation rule does not impermissibly interfere with the constitutional liberty to contract. In re 11 N.C.A.C 12.0319, 134 N.C. App. 22, 517 S.E.2d 134 (1999), cert. denied, appeal dismissed, 351 N.C. 105, — S.E.2d — (1999).

Election Statutes. — The trial court properly refused to declare §§ 163-106 and 163-323 unconstitutional although, taken together, they created a "loophole" which allowed a candidate to run for a superior court seat and another office on the same election day, regardless of the filing periods; the provisions did not create a benefit to lawyers while denying non-lawyers the equal protection of the law, they did not remove the election process from the hands of the voters, and they did not allow dual officeholding in violation of Art. VI, § 9 of the North Carolina Constitution, although they did allow dual candidacy. Comer v. Ammons, 135 N.C. App. 531, 522 S.E.2d 77 (1999).

Criminal Statutes. — Section 14-72.1, relating to the concealment of merchandise in mercantile establishments, violates neither this section nor the due process clause of the federal Constitution. State v. Hales, 256 N.C. 27, 122 S.E.2d 768 (1961).

Short Form Murder Indictment Lacking Elements of Premeditation and Deliberation Upheld. — The court rejected the defendant's argument that because the indictment failed to allege two essential elements of first degree murder, i.e., premeditation and deliberation, his conviction of first degree murder based thereon violated Article I, §§ 19, 22 and 23 of the North Carolina Constitution. The court found that the defendant had adequate notice of the charge against him, as North Carolina has for nearly 100 years authorized the use of the short form murder indictment as sufficient to allege the elements of premeditation and deliberation, and the jury was properly required to find those elements beyond a reasonable doubt. State v. Holder, — N.C. App. —, 530 S.E.2d 562, 2000 N.C. App. LEXIS 552 (2000).

Sec. 20. General warrants.

Legal Periodicals. —

For note on determining reasonable, articulable suspicion from the totality of the circumstances in two North Carolina stop and frisk cases, see 78 N.C.L. Rev. 539 (2000).

CASE NOTES

II. WARRANTLESS SEARCHES.

Drug Search Upheld after Traffic Stop under Wren Rule. — Where defendant, who had been stopped for speeding and following too closely, presented a nervous appearance, gave vague answers as to ownership of car, and refused permission to search it, court properly found police had probable cause, questioning did not exceed permissible scope of the traffic stop, and detention of defendant was justified and not in violation of defendant's constitutional rights under this section. The Supreme Court further declared subjective motives of police officer immaterial and upheld use of the objective. When rule standard to determine reasonableness of police action, related to probable cause, in view of constitutional concerns. State v. McClendon, 350 N.C. 630, 517 S.E.2d 128 (1999).

No Legitimate Expectation of Privacy in Communal Dumpster. — Because communal dumpster was not within the curtilage of defendant, he retained no legitimate expectation of privacy in his garbage once he placed it in said dumpster, and the warrantless search of the dumpster, resulting in charges of trafficking in cocaine, did not violate this section. State v. Washington, 134 N.C. App. 479, 518 S.E.2d 14 (1999).

Warrantless Search Upheld. —

The defendant's motion to suppress was properly denied where the detectives' prior knowledge of local drug activity, coupled with their 1:00 a.m. observations at the address as well as the circumstances surrounding defendant's actions, provided a sufficient basis for those experienced law enforcement officers to draw a reasonable inference "that criminal activity was afoot," id., thus warranting the investigative stop. State v. Parker, — N.C. App. —, 530 S.E.2d 297, 2000 N.C. App. LEXIS 506 (2000).

Warrantless Search Held Improper. —

Due to the paucity of the evidence presented by the State, the appellate court agreed with the defendant that crack cocaine and drug paraphernalia seized by a police officer at the hospital while he was visiting and interviewing the wounded defendant should have been suppressed, because the warrantless seizure and search of wads of brown paper uncovered as nurse undressed defendant was unconstitutional. State v. Graves, 135 N.C. App. 216, 519 S.E.2d 770 (1999).

Sec. 22. Modes of prosecution.

CASE NOTES

Short Form Murder Indictment Lacking Elements of Premeditation and Deliberation Upheld. — The court rejected the defendant's argument that because the indictment failed to allege two essential elements of first degree murder, i.e., premeditation and deliberation, his conviction of first degree murder based thereon violated Article I, §§ 19, 22 and 23 of the North Carolina Constitution. The court found that the defendant had adequate notice of the charge against him, as North Carolina has for nearly 100 years authorized the use of the short form murder indictment as sufficient to allege the elements of premeditation and deliberation, and the jury was properly required to find those elements beyond a reasonable doubt. State v. Holder, — N.C. App. —, 530 S.E.2d 562, 2000 N.C. App. LEXIS 552 (2000).

Sec. 23. Rights of accused.

CASE NOTES

I. GENERAL CONSIDERATION.

Prejudicial Argument. —

The defendant's constitutional rights under Article I, Sections 19, 23, and 27 of the North Carolina Constitution were not violated by the prosecution's argument in opposition to the "catchall" mitigating circumstance of § 15A-2000(f) that the jury should not give any mitigating value to the fact that his accomplice was not sentenced to death where the prosecution did not imply that the accomplice's sentence could be treated as a nonstatutory aggravating circumstance. State v. Roseboro, 351 N.C. 536, 528 S.E.2d 1 (2000).

Non-Prejudicial Argument. — Prosecutor's arguments, including statements comparing defendant's cozy life in prison and his numerous protections under the Constitution with victims' lack of opportunities, was unlikely to have influenced the jury's sentencing recommendations and, therefore, did not deny defendant his constitutional due process rights. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Jury Instructions. — Pattern jury instruction used by trial court was internally consistent and meaningful, and did not misuse the term "extenuating," nor define the term "mitigating circumstance" in such a way as to confuse jurors or violate the defendant's due process and fundamental fairness rights. State v. Peterson, 350 N.C. 518, 516 S.E.2d 131 (1999), cert. denied, — U.S. —, 120 S. Ct. 1181, 145 L. Ed. 2d 1087 (2000).

While trial court's jury instructions may have been confusing initially, the court ultimately set forth the required elements as to felonious assault with a deadly weapon inflicting serious injury and, therefore, did not violate the defendant's constitutional rights under this section and N.C. Const., Art. I, Sections 19 and 27. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Defendant was not deprived of his constitutional rights where no conflict existed between the "Issues and Recommendation as to Punishment" form and the oral instructions given by the trial court. State v. Peterson, 350 N.C. 518, 516 S.E.2d 131 (1999), cert. denied, — U.S. —, 120 S. Ct. 1181, 145 L. Ed. 2d 1087 (2000).

Pecuniary Gain Instruction Not Violative of Constitutional Rights. — Jury instruction regarding capital felony committed for pecuniary gain to support submission of aggravating circumstance under § 15A-2000(e)(6) did not violate defendant's due process and fair trial rights under this section and N.C., Art. I, § 19 although gun may have been intended for his personal use, it had pecuniary value. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Failure to Include Defendant in Discussion Regarding Removal of Leg Shackles. — Even if trial judge's conversation with defendant's standby counsel, held outside defendant's presence, concerning whether or not to remove his leg shackles constituted a "stage" in the proceeding, the error in excluding defendant was harmless beyond a reasonable doubt. State v. Thomas, 134 N.C. App. 560, 518 S.E.2d 222 (1999), appeal dismissed, cert. denied, 351 N.C. 119, — S.E.2d — (1999).

Applied in State v. Greene, 351 N.C. 562, 528 S.E.2d 575 (2000).

Cited in Staton v. Brame, 136 N.C. App. 170, 523 S.E.2d 424 (1999).

II. RIGHT TO BE INFORMED OF ACCUSATION.

Sufficiency of Charging Offense in Words of Statute. —
The court rejected the defendant's argument that because the indictment failed to allege two essential elements of first degree murder, i.e., premeditation and deliberation, his conviction of first degree murder based thereon violated Article I, §§ 19, 22 and 23 of the North Carolina Constitution. The court found that the defendant had adequate notice of the charge against him, as North Carolina has for nearly 100 years authorized the use of the short form murder indictment as sufficient to allege the elements of premeditation and deliberation, and the jury was properly required to find those elements beyond a reasonable doubt. State v. Holder, — N.C. App. —, 530 S.E.2d 562, 2000 N.C. App. LEXIS 552 (2000).

III. RIGHT OF CONFRONTATION.

A. In General.

Trial court's unrecorded private communications with three prospective jurors, perhaps violative of defendant's nonwaivable constitutional right to be present at every stage of his trial, were harmless error beyond a reasonable doubt because the record adequately revealed the substance of those communications and the jurors were properly excused. State v. Nobles, 350 N.C. 483, 515 S.E.2d 885 (1999).

Private Discussion Between Judge and Jurors Who Had Been Dismissed. —
No violation of defendant's constitutional right to be present at every stage of his trial, pursuant to this section, occurred on account of the trial court's alleged ex parte communication with, and the excusing of, a juror. The trial court's memorialization of the private communication between the prospective juror, the clerk and the trial court, which was neither questioned nor objected to by defendant or his counsel, disclosed that the prospective juror was excused for a valid reason and that the communication was harmless beyond a reasonable doubt. State v. Holder, — N.C. App. —, 530 S.E.2d 562, 2000 N.C. App. LEXIS 552 (2000).

B. Illustrative Cases.

Absence of Material Witness. —
Defendant was not deprived of his constitutional right to present witnesses to confront the evidence against him because his counsel's unsworn statement in support of a continuance, regarding the testimony of a witness whose location had just been discovered the day before, failed to provide detailed proof of a reason for delay and actually supported the State's case. State v. Cody, 135 N.C. App. 722, 522 S.E.2d 777 (1999).

Brevity and Reliability of Witness. —
Where testifying witness observed defendant during the day, from a short distance, and long enough to notice his unseasonable clothing, witness's identification of him was not too brief and therefore not inherently incredible, and its admittance into evidence was not violative of his due process rights under this section and N.C. Const., Art. I, §§ 19 and 27. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Unavailable Witness. —
Where child victim was unavailable to testify against defendant/father, admission of hearsay statements did not infringe upon the defendant's constitutional right to confront witnesses. State v. Pretty, 134 N.C. App. 379, 517 S.E.2d 677 (1999), cert. denied, appeal dismissed, 351 N.C. 117, — S.E.2d — (1999).

Trial court's exclusion of defendant's proposed cross-examination regarding codefendant's outstanding warrants was reasonable in view of its repetitive and cumulative effect, was at any rate harmless error beyond a reasonable doubt, and was not a violation of the North Carolina Constitution. State v. McNeil, 350 N.C. 657, 518 S.E.2d 486 (1999), cert. denied, — U.S. —, 120 S. Ct. 1432, 146 L. Ed. 2d 321 (2000).

IV. RIGHT TO COUNSEL.

A. In General.

Right to Counsel May Be Forfeited —
The defendant forfeited his right to counsel and the trial court did not err by requiring him to proceed pro se, without conducting an inquiry pursuant to § 15A-1242, where he was twice appointed counsel as an indigent, each time releasing his appointed counsel and retaining private counsel. Defendant was disruptive in the courtroom on two occasions, refused to cooperate with his counsel and assaulted him, resulting in an additional month's delay in the trial. State v. Montgomery, — N.C. App. —, 530 S.E.2d 66, 2000 N.C. App. LEXIS 640 (2000).

When Failure to Grant Continuance Is Denial of Effective Assistance. —
The defendant was entitled to a new trial because the court's denials of his repeated motions for a continuance resulted in a violation of his constitutional rights to effective assistance of counsel, to confront his accusers, and to due process of law. Defendant's counsels had only thirty-four days to prepare for a complex, bifurcated capital case, involving multiple incidents in multiple locations over a two-day period, which they took over from another attorney who had done little other than filing pretrial motions while trying to persuade the defendant

to accept a plea bargain. No evidence existed that any witness interviews had been performed; the orders based on the trial court's rulings on pretrial motions had not been prepared; and a jury questionnaire was not submitted for distribution to prospective jurors. State v. Rogers, — N.C. —, 529 S.E.2d 671, 2000 N.C. LEXIS 430 (2000).

V. SELF-INCRIMINATION.

B. Confessions.

Question of voluntariness must be determined by the total circumstances, etc. —

Where defendant asserted that he had not slept nor eaten during the two days prior to his arrest, but failed to show by convincing evidence that he was impaired, intoxicated or coerced at the time he made statements to the police, the trial court did not commit reversible error by admitting defendant's statements into evidence. State v. Cheek, 351 N.C. 48, 520 S.E.2d 545 (1999), cert. denied, — U.S. —, 120 S. Ct. 2694, — L. Ed. — (2000).

Confession Held Voluntary. — The granting of defendant's request to see his girlfriend and the mother of his child did not render his confession involuntary where the investigators's statements that they would attempt to contact the women were made only in response to defendant's request, where there was no evidence that investigators used the request as an inducement to obtain his confession, where investigators advised defendant that the police had no control over whether the women came to the station, where defendant himself stated that his confession was not thereby induced, and where the request had no relation to relief from the charges he faced. State v. Wallace, 351 N.C. 481, 528 S.E.2d 326 (2000).

Court's denial of defendant's motion to suppress in-custody inculpatory statements he gave to law enforcement officers did not violate his constitutional rights. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Admission of Confessions Upheld. —

The trial court's findings of fact, not specifically excepted to by the defendant, fully supported its conclusions of law that defendant's statements to the police were freely, voluntarily and understandingly made and that none of the defendant's State constitutional rights were violated by his arrest, detention, interrogation or statements. State v. Cheek, 351 N.C. 48, 520 S.E.2d 545 (1999), cert. denied, — U.S. —, 120 S. Ct. 2694, — L. Ed. — (2000).

Sec. 24. Right of jury trial in criminal cases.

CASE NOTES

I. IN GENERAL.

Premature Selection of Foreperson Not a Constitutional Violation. — Court found no violation of § 15A-1215(a) or the defendant's constitutional rights under this section when 12 jurors prematurely selected a foreperson while alternates were still present in jury room, because they made no deliberations nor had any other conversation regarding the facts of the case. State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Jury Instructions. — Defendant was not deprived of his constitutional rights, because no conflict existed between "Issues and Recommendation as to Punishment" form and oral instructions given by the trial court. State v. Peterson, 350 N.C. 518, 516 S.E.2d 131 (1999), cert. denied, — U.S. —, 120 S. Ct. 1181, 145 L. Ed. 2d 1087 (2000).

Cited in State v. McNeil, 350 N.C. 657, 518 S.E.2d 486 (1999), cert. denied, — U.S. —, 120 S. Ct. 1432, 146 L. Ed. 2d 321 (2000); State v. Cheek, 351 N.C. 48, 520 S.E.2d 545 (1999), cert. denied, — U.S. —, 120 S. Ct. 2694, — L. Ed. — (2000).

Sec. 25. Right of jury trial in civil cases.

CASE NOTES

II. SPECIFIC PROCEEDINGS.

The Date of Separation in the Context of Equitable Distribution — In the context of equitable distribution, defendant does not have a right to jury trial on the issue of the date of separation when he seeks a divorce from bed and board. No such constitutional right exists nor has the legislature statutorily provided for such a right when it drafted the equitable distribution statutes although the date of separation is a jury-triable issue within the absolute divorce context. McCall v. McCall, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 795 (July 5, 2000).

Sec. 26. Jury service.

CASE NOTES

To make out a prima facie case of discrimination.

The trial court properly denied defendant's Batson challenge based on defendant's failure to make a prima facie showing of racial discrimination; a prima facie case was not made out simply because the juror struck by the peremptory challenge and the defendant were both African-Americans. State v. Lawrence, — N.C. —, — S.E.2d —, 2000 N.C. LEXIS 441 (June 16, 2000).

The defendant did not make a prima facie showing, etc.

Defendant failed to establish a prima facie case that the State exercised its peremptory challenges in a racially discriminatory manner during the jury selection process where the victims were black, the State's key witnesses were black, the prosecutor made no racially motivated remarks, and the jury was composed of four black males, one black female, three white males, and four white females, with one black male and one black female as alternates. State v. Smith, 351 N.C. 251, 524 S.E.2d 28 (2000).

Sec. 27. Bail, fines, and punishments.

CASE NOTES

I. In General.
II. Particular Statutes.
III. Illustrative Cases.

I. IN GENERAL.

Applied in State v. Roseboro, 351 N.C. 536, 528 S.E.2d 1 (2000).

Stated in State v. Parker, 350 N.C. 411, 516 S.E.2d 106 (1999), cert. denied, — U.S. —, 120 S. Ct. 808, 145 L. Ed. 2d 681 (2000).

Cited in State v. Peterson, 350 N.C. 518, 516 S.E.2d 131 (1999), cert. denied, — U.S. —, 120 S. Ct. 1181, 145 L. Ed. 2d 1087 (2000); State v. McNeil, 350 N.C. 657, 518 S.E.2d 486 (1999), cert. denied, — U.S. —, 120 S. Ct. 1432, 146 L. Ed. 2d 321 (2000); State v. Cheek, 351 N.C. 48, 520 S.E.2d 545 (1999), cert. denied, — U.S. —, 120 S. Ct. 2694, — L. Ed. — (2000); State v. Greene, 351 N.C. 562, 528 S.E.2d 575 (2000).

II. PARTICULAR STATUTES.

Although consent is not a defense to "statutory" rape under § 14-27.7A, the sentencing scheme does not violate the North Carolina Constitution. State v. Anthony, 133 N.C. App. 573, 516 S.E.2d 195 (1999), appeal dismissed, cert. granted, 351 N.C. 109, 516 S.E.2d 195 (1999), aff'd, 528 S.E.2d 321 (2000).

III. ILLUSTRATIVE CASES.

Drug Trafficking — The defendant's sentence was not disproportionate to her crimes although her more culpable co-conspirators received lesser or equivalent sentences after plea-arrangements where the sentences imposed upon defendant, albeit consecutive, were within the presumptive statutory range authorized for her drug trafficking offenses under the Structured Sentencing Act. State v. Parker, — N.C. App. —, 530 S.E.2d 297, 2000 N.C. App. LEXIS 506 (2000).

Sec. 32. Exclusive emoluments.

CASE NOTES

Extension of city council term of office did not result in an exclusive emolument in violation of the state Constitution. Crump v. Snead, 134 N.C. App. 353, 517 S.E.2d 384

(1999), cert. denied, 351 N.C. 101, — S.E.2d — (1999).

Applied in Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122 (1999).

Sec. 36. Other rights of the people.

CASE NOTES

An extension in the city council's term of office neither violated petitioners' constitutional right to participate in the political process nor infringed upon the rights of voters. Crump v. Snead, 134 N.C. App. 353, 517 S.E.2d 384 (1999), cert. denied, 351 N.C. 101, — S.E.2d — (1999).

No Constitutional Right to Erosion Control. — Plaintiffs' claims that hardened structure rules, promulgated by defendants, effected a taking of property without just compensation and violated § 113A-128 of the Coastal Area Management Act were properly dismissed, because plaintiffs failed to cite any persuasive authority for the proposition that a littoral or riparian landowner has a right to erect hardened structures in statutorily designated areas of environmental concern to protect their property from erosion or migration. Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 217, 517 S.E.2d 406 (1999).

Stated in Midulla v. Howard A. Cain Co., Inc., 133 N.C. App. 306, 515 S.E.2d 244 (1999).

ARTICLE II

LEGISLATIVE

Section 1. Legislative power.

CASE NOTES

Denial of Special Use Permit. — Where petitioners produced competent, material and substantial prima facie evidence to show their compliance with four general conditions required to obtain a special use permit needed to construct a mobile home park, and where city council failed to make adequate findings of fact to support denial of the special use application, such action constituted an unlawful exercise of legislative power in violation of this section. Clark v. City of Asheboro, 136 N.C. App. 114, 524 S.E.2d 46 (1999).

OPINIONS OF ATTORNEY GENERAL

Contingent Lottery Legislation Not Invalid Delegation of Legislative Power. — A statute enacted by the General Assembly providing for a lottery, with the effectiveness contingent upon the results of a statewide referendum, is neither constitutionally forbidden nor invalid as a prohibited delegation of legislative power. See opinion of Attorney General to Honorable James S. Forrester, M.D., North Carolina Senate, 1999 N.C.A.G. 7 (3/2/99).

Sec. 24. Limitations on local, private, and special legislation.

CASE NOTES

I. GENERAL CONSIDERATION.

Cited in Hamlet HMA, Inc. v. Richmond County, — N.C. App. —, — S.E.2d —, 2000 N.C. App. LEXIS 636 (June 20, 2000).

ARTICLE III

EXECUTIVE

Section 1. Executive power.

Legal Periodicals. —
For article, "A Study in Separation of Powers: Executive Power in North Carolina," see 77 N.C.L. Rev. 2049 (1999).

Sec. 5. Duties of Governor.

Legal Periodicals. —
For a discussion of the Governor's power to appoint officers, see section in article entitled "A Study in Separation of Powers: Executive Power in North Carolina," 77 N.C.L. Rev. 2049 (1999).

ARTICLE IV

JUDICIAL

Section 1. Judicial power.

CASE NOTES

Stated in In re Will of Buck, 350 N.C. 612, 516 S.E.2d 858 (1999).

Sec. 9. Superior Courts.

OPINIONS OF ATTORNEY GENERAL

Regarding requirements for becoming a Senior Resident Superior Court Judge, see opinion of Attorney General to Honorable Thomas Ross, Superior Court Judge, N.C. General Assembly, 1999 N.C.A.G. 14 (5/27/99).

Sec. 12. Jurisdiction of the General Court of Justice.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Applied in Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 515 S.E.2d 675 (1999), cert. denied, — U.S. —, 120 S. Ct. 1452, 146 L. Ed. 2d 337 (2000).

Stated in In re Voight, — N.C. App. —, 530 S.E.2d 76, 2000 N.C. App. LEXIS 624 (2000).

OPINIONS OF ATTORNEY GENERAL

No Continued Residence Requirements. — Continued residence in the county for which a magistrate is appointed is not a prerequisite to remain in the office of magistrate for the term of the appointment. See opinion of Attorney General to Mr. David A. Phillips, Attorney at Law, 1997 N.C.A.G. 61 (10/8/97).

Sec. 22. Qualification of Justices and Judges.

CASE NOTES

Stated in Comer v. Ammons, 135 N.C. App. 531, 522 S.E.2d 77 (1999).

OPINIONS OF ATTORNEY GENERAL

A layman serving as a District Court Judge on and prior to January 1, 1981, etc. A layman serving as a District Court Judge on and prior to January 1, 1981, is eligible for appointment or election to the Office of Judge of the Superior Court. See opinion of Attorney General to The Honorable Arnold O. Jones, District Court Judge, 1998 N.C.A.G. 27 (6/23/98).

ARTICLE V

FINANCE

Sec. 2. State and local taxation.

Legal Periodicals. —

For note, "Choosing Fairness over Fundamentals: How Bailey v. North Carolina Undermines the Constitutional Prohibition Against the State Contracting Away Its Power of Taxation," see 77 N.C. L. Rev. 2215 (1999).

CASE NOTES

V. EXEMPTIONS.

A. In General.

Educational Exemption Upheld. — The court upheld § 105-278.4, the educational exemption statute, in spite of a seminary's challenge on constitutional grounds that it applied unequally to various property tracts and violated the rule of uniformity; the four requirements of the section were reasonably objective and did not result in any hostile or systematic discrimination and, further, the exemption requirements were sufficiently enumerated. In re Southeastern Baptist Theological Seminary, Inc., 135 N.C. App. 247, 520 S.E.2d 302 (1999).

OPINIONS OF ATTORNEY GENERAL

Town's Tax Rebate Program. — It could reasonably be argued that a Business Development Investment Grant program's tax rebate scheme, designed to offer tax rebates for the purposes of "diversify[ing] the tax base, offer[ing] improved employment opportunities for citizens" and "promot[ing] economic growth," complied with the uniformity rule of this section. See opinion of Attorney General to Robert B. Smith, Jr., Smith and Gamblin, PLLC Attorneys at Law, 1997 N.C.A.G. 55 (8/29/97).

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Sec. 5. Elections by people and General Assembly.

OPINIONS OF ATTORNEY GENERAL

Provisional Ballots. — Ordinarily, applications to vote provisionally are viewed as public records which must be disclosed pursuant to Chapter 132 of the North Carolina General Statutes, because these documents are separate from ballots and there are a sufficient quantity of provisional ballots so that no vote could be attributed to any particular provisional voter. However, when there is only one provisional voter, that voter has an overriding and personal right to a secret ballot under this section, and a County Board of Elections is prohibited from disclosing any information that would identify the provisional voter. See opinion of Attorney General to Mr. Stephen T. Gheen, Chairman Gaston County Board of Elections, 1997 N.C.A.G. 67 (11/6/97).

Sec. 9. Dual office holding.

CASE NOTES

Dual Candidacy. — The trial court properly refused to declare §§ 163-106 and 163-323 unconstitutional although, taken together, they created a "loophole" which allowed a candidate to run for a superior court seat and another office on the same election day, regardless of the filing periods; the provisions do not create a benefit to lawyers while denying non-lawyers the equal protection of the law, they do not remove the election process from the hands of the voters, and they do not allow dual officeholding in violation of this section although they do allow dual candidacy. Comer v. Ammons, 135 N.C. App. 531, 522 S.E.2d 77 (1999).

Sec. 10. Continuation in office.

OPINIONS OF ATTORNEY GENERAL

An incumbent sheriff should continue to act as sheriff during the pendency of an election protest after the expiration of his term until his successor has been qualified. See opinion of Attorney General to Mr. Garris Neil Yarborough, Hoke County Attorney, 1998 N.C.A.G. 53 (12/3/98).

ARTICLE VII

LOCAL GOVERNMENT

Section 1. General Assembly to provide for local government.

CASE NOTES

Alteration of Charter Not Forbidden. — General Assembly was acting within its authority when it amended city's charter and extended city council term of office to four years. Crump v. Snead, 134 N.C. App. 353, 517 S.E.2d 384 (1999), cert. denied, 351 N.C. 101, — S.E.2d — (1999).

ARTICLE IX

EDUCATION

Sec. 2. Uniform system of schools.

CASE NOTES

Cited in Cash v. Granville County Bd. of Educ., — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 4852 (E.D.N.C. March 8, 2000).

Sec. 7. County school fund.

OPINIONS OF ATTORNEY GENERAL

Monies collected by a city from motorists who violate its ordinance prohibiting overtime parking do not constitute a penalty for a breach of a State penal law, and such "clear proceeds" need, therefore, not be used for the county schools pursuant to this section but may be kept by the city. See opinion of Attorney General to The Honorable C. Colon Willoughy, Jr., District Attorney, Tenth Judicial District, 1997 N.C.A.G. 58 (9/16/97).

Disposition of Proceeds of Environmental Civil Penalties. — The proceeds of environmental civil penalties controlled by this section, which were collected from offending local school administrative units before September 1, 1997, may not be returned to the offending local units but rather should be deposited into the General Fund. The proceeds of environmental civil penalties controlled by this section which are collected from offending local school administrative units on or after September 1, 1997, may not be returned to the offending local units. However, in compliance with § 115C-457.1 et seq., these funds should be remitted to the Civil Penalty and Forfeiture Fund, transferred to the State School Technology Fund, and allocated to all eligible local school administrative units, except the offending unit, on the basis of average daily membership. See opinion of Attorney General to Richard Whisnant, General Counsel Department of Environment, Health & Natural Resources, 1997 N.C.A.G. 65 (11/4/97).

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Sec. 4. Welfare policy; board of public welfare.

Legal Periodicals. —

For article discussing the rise and decline of North Carolina Abortion Fund, see 22 Campbell L. Rev. 119 (1999).

ARTICLE XIV

MISCELLANEOUS

Sec. 2. State boundaries.

OPINIONS OF ATTORNEY GENERAL

Ambulatory Seaward Boundary Consistent with Constitution. — While a proposal to permanently fix the seaward boundary for the State at specific coordinates would violate both § 141-6(a), and this section, the acceptance of an ambulatory boundary, which merely represents the seaward boundary's location at a certain time, and moves with changes to the shoreline, whether by erosion, accretion or fill deposition, would be consistent with the Constitution and not require amendment of the statute; a reading of the State constitutional provision together with the statute and the case law reveal them to require that the eastern boundary always remain at distance of three geographical miles from the extreme low water mark. See opinion of Attorney General to Gary W. Thompson, Chief, North Carolina Geodetic Survey, 1998 N.C.A.G. 7 (2/11/98).

TABLES OF LAWS CODIFIED SUBSEQUENT TO 1919

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3	1	116D-1 note, 116D-21
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7	1	160A-33 L.M., 160A-45 L.M.
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9	7	160A-265 L.M.
11	1	153A-335 L.M.
12	1	14-401.17
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	18	143-215.104F note, 143-215.104N note
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20	1	131A-21, 132-1 L.M., 160A-388 L.M.
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21	1	58-84-1 L.M.
22	1	58-84-1 L.M.
23	1	113A-240 note
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24	1	160A-31 L.M.
26	1	20-1 L.M., 40A-1 L.M., 132-1 L.M., 143-128 L.M., 143-129 L.M., 143-131 L.M., 143-318.9 L.M., 160A-265 L.M., 160A-269 L.M., 160A-272 L.M., 160A-388 L.M.

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Sections Added, Amended or Repealed 2000 Session

This table lists the sections of the General Statutes of North Carolina which were added, amended or repealed during the 2000 legislative session of the General Assembly.

In instances where the effective date of an act has been postponed beyond January 1, 2001, the effective date of such act is indicated in the right-hand column.

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1A-1-5	Amended	127	1	
1A-1-6	Amended	127	5	
1A-1-7	Amended	127	2	
1A-1-56	Amended	127	6	
1C-1750	Added	1	1	
1C-1760	Added	1	1	
1-289	Amended	1	2	
1-311	Amended	144	14	7/1/01
1-413	Amended	144	15	7/1/01
5A-23	Amended	140	35	
6-19.1	Amended	190	1	
6-21.2	Amended	169	27	
7A-16	Amended	67	15.5(a)	
7A-38.4	Amended	140	1	
7A-39	Added	166	1	
7A-41	Amended	67	15.6(b)	
7A-41	Amended	140	36	
7A-44.1	Amended	67	15.4(a)	
7A-45.1	Amended	67	15.8(a)	
7A-64	Amended	67	15.4(g)	
7A-65	Amended	67	26.3A(a)	
7A-101	Amended	67	26.4	
7A-101	Amended	140	93.1(b)	
7A-102	Amended	67	15.4(b)	
7A-102	Amended	67	26.5	
7A-113	Amended	140	93.1(a)	
7A-133	Amended	67	15.2	
7A-133	Amended	67	15.3(a)	
7A-171.1	Amended	67	26.6	
7A-211.1	Amended	185	1	
7A-300	Amended	67	15.4(c)	
7A-302	Amended	137	4(a)	
7A-304	Amended	109	4(a)	
7A-304	Amended	144	2	7/1/01
7A-305	Amended	109	4(b)	
7A-306	Amended	109	4(c)	
7A-307	Amended	109	4(d)	
7A-308	Amended	67	15.3A(a)	
7A-308	Amended	109	4(e)	
7A-313	Amended	109	5	
7A-313	Amended	140	104	
7A-314	Amended	144	3	7/1/01
7A-343.1	Amended	137	4(b)	
7A-343.2	Amended	67	15.1	

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7A-344	Repealed	144	4	7/1/01
7A-346.1	Repealed	67	15(b)	
7A-346.2	Amended	67	15.3A(b)	
7A-346.2	Added	67	15.4(h)	
7A-450	Amended	144	5	7/1/01
7A-451	Amended	144	6	7/1/01
7A-452	Amended	144	7	7/1/01
7A-453	Amended	144	8	7/1/01
7A-454	Amended	144	9	7/1/01
7A-455	Amended	144	10	7/1/01
7A-457	Amended	144	11	7/1/01
7A-458	Amended	144	12	7/1/01
7A-459	Repealed	144	13	7/1/01
7A-465	Amended	67	26.3A(b)	
7A-465	Repealed	144	13	7/1/01
7A-466	Repealed	144	13	7/1/01
7A-467	Amended	67	15.4(d)	
7A-467	Repealed	144	13	7/1/01
7A-469	Repealed	144	13	7/1/01
7A-470	Repealed	144	13	7/1/01
7A-471	Repealed	144	13	7/1/01
7A-486	Repealed	144	13	7/1/01
7A-486.1	Repealed	144	13	7/1/01
7A-486.2	Repealed	144	13	7/1/01
7A-486.3	Repealed	144	13	7/1/01
7A-486.4	Repealed	144	13	7/1/01
7A-486.5	Repealed	144	13	7/1/01
7A-486.6	Repealed	144	13	7/1/01
7A-486.7	Repealed	144	13	7/1/01
7A-498	Added	144	1	7/1/01
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7A-498.2	Added	144	1	
7A-498.3	Added	144	1	7/1/01
7A-498.4	Added	144	1	
7A-498.5	Added	144	1	
7A-498.6	Added	144	1	
7A-498.7	Added	144	1	7/1/01
7A-498.8	Added	144	1	7/1/01
7A-750	Amended	190	2	1/1/01
7A-751	Amended	140	38	
7A-754	Amended	190	3	
7A-770	Amended	67	15.9(a)	
7A-773.1	Amended	67	15.9(b)	
7B-406	Amended	183	1	
7B-600	Amended	124	1	
7B-602	Amended	144	16	7/1/01
7B-603	Amended	144	17	7/1/01
7B-906	Amended	124	2	
7B-1000	Amended	124	3	
7B-1101	Amended	144	18	7/1/01
7B-1101	Amended	183	2	
7B-1102	Amended	183	3	
7B-1103	Amended	183	4	
7B-1104	Amended	183	5	
7B-1106	Amended	183	13	
7B-1106.1	Added	183	6	
7B-1107	Amended	183	7	
7B-1108	Amended	183	8	
7B-1109	Amended	144	19	7/1/01

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7B-1109	Amended	183	9	
7B-1110	Amended	183	10	
7B-1111	Amended	183	11	
7B-1112	Amended	183	12	
7B-1501	Amended	137	2	
7B-1601	Amended	137	3	
7B-1602	Amended	137	3	
7B-1700	Amended	137	3	
7B-1702	Amended	137	3	
7B-1808	Amended	144	20	7/1/01
7B-1900	Amended	137	3	
7B-1903	Amended	137	3	
7B-1906	Amended	144	21	7/1/01
7B-2000	Amended	144	22	7/1/01
7B-2002	Amended	144	23	7/1/01
7B-2102	Amended	137	3	
7B-2412	Amended	137	3	
7B-2506	Amended	137	3	
7B-2507	Amended	137	3	
7B-2508	Amended	137	3	
7B-2510	Amended	137	3	
7B-2513	Amended	137	3	
7B-2514	Amended	137	3	
7B-2515	Amended	137	3	
7B-2517	Amended	137	3	
7B-2600	Amended	137	3	
7B-2601	Amended	137	3	
7B-2704	Amended	144	24	7/1/01
7B-2804	Amended	144	25	7/1/01
7B-2805	Amended	144	26	7/1/01
7B-3000	Amended	137	3	
7B-3001	Amended	137	3	
7B-3100	Amended	137	3	
7B-3200	Amended	137	3	
7B-3300	Amended	137	3	
14-7.7	Amended	155	14	
14-107.2	Added	67	15.3A(a)	
14-111.2	Amended	15	1	
14-111.3	Amended	15	2	
14-113.20	Amended	140	37	
14-196	Amended	125	2	
14-196.3	Amended	140	91	
14-196.3	Added	125	1	
14-234	Amended	147	6	
14-280.1	Added	146	10	
14-298	Amended	151	5	
14-306	Amended	151	4	
14-306.1	Added	151	1	
14-306.2	Added	151	2	
14-309	Amended	151	3	
14-316.1	Amended	137	4(c)	
14-401.17	Amended	12	1	
14-415.11	Amended	140	103	
14-415.11	Amended	191	5	
14-415.14	Amended	140	103	
14-415.14	Amended	191	3	
14-415.16	Amended	140	103	
14-415.16	Amended	191	1	
14-415.19	Amended	140	103	

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14-415.19	Amended	191	2	
14-453	Amended	125	3	
14-454	Amended	125	4	
14-455	Amended	125	5	
14-456	Amended	125	6	
14-458	Amended	125	7	
15A-279	Amended	144	28	7/1/01
15A-531	Amended	133	1	
15A-531	Added	133	5	
15A-540	Amended	133	2	
15A-543	Amended	133	3	
15A-544	Repealed	133	4	
15A-544.1	Added	133	6	
15A-544.2	Added	133	6	
15A-544.3	Added	133	6	
15A-544.4	Added	133	6	
15A-544.5	Added	133	6	
15A-544.6	Added	133	6	
15A-544.7	Added	133	6	
15A-544.8	Added	133	6	
15A-803	Amended	144	29	7/1/01
15A-1243	Amended	144	30	7/1/01
15A-1333	Amended	67	15.9(c)	
15A-1343	Amended	125	8	
15A-1343	Amended	144	31	7/1/01
15A-1368.6	Amended	189	1	
15A-1376	Amended	189	2	
15B-6	Amended	189	3	
15-11.1	Amended	144	27	7/1/01
17C-2	Amended	67	17.3(a)	6/30/01
17C-3	Amended	67	17.3(b)	6/30/01
17C-3	Amended	137	4(d)	
17C-3	Amended	140	38.1(a)	
17C-6	Amended	140	38.1(b)	
18B-108	Amended	140	39	
18B-603	Amended	140	2	
18B-1009	Amended	140	93.1(a)	
19A-55	Added	163	1	
19A-55	Added	163	5	
19A-60	Added	163	1	
19A-61	Added	163	1	
19A-62	Added	163	1	
19A-63	Added	163	1	
19A-64	Added	163	1	
20-4.01	Amended	155	9	
20-4.01	Amended	173	10(c)	
20-7	Amended	120	14	
20-7	Amended	120	15	
20-7	Amended	140	93.1(a)	
20-16	Amended	109	7(d)	
20-16	Amended	117	2	
20-16	Amended	155	10	
20-16.2	Amended	155	5	
20-16.5	Amended	140	103A	
20-16.5	Amended	155	15	
20-17.4	Amended	109	7(e)	
20-17.8	Amended	155	1	
20-17.8	Amended	155	2	
20-17.8	Amended	155	3	

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20-19	Amended	140	3	
20-19	Amended	140	4	
20-19	Amended	155	6	
20-28.2	Amended	169	28	7/1/01
20-28.3	Amended	169	29	7/1/01
20-52.1	Amended	182	1	5/1/01
20-58	Amended	182	2	5/1/01
20-58.8	Amended	169	30	7/1/01
20-63	Amended	182	3	5/1/01
20-72	Amended	182	4	5/1/01
20-79.1	Amended	182	5	5/1/01
20-79.4	Amended	159	1	
20-79.4	Amended	159	2	
20-79.5	Amended	137	4(e)	
20-79.7	Amended	159	3	
20-79.7	Amended	159	4	
20-81.12	Amended	159	5	
20-81.12	Amended	159	6	
20-81.12	Amended	163	3	
20-84	Amended	159	7	
20-96	Amended	67	25.11	
20-101	Amended	67	25.8	
20-116	Amended	185	2	
20-118	Amended	57	1	
20-119	Amended	109	7(a), (f), (g)	
20-127	Amended	75	1	7/1/01
20-128	Amended	134	6	
20-129.1	Amended	159	10	
20-137.1	Amended	117	1	
20-138.2A	Amended	140	5	
20-138.2A	Amended	155	16	
20-138.2B	Amended	140	6	
20-138.2B	Amended	155	17	
20-138.3	Amended	140	7	
20-138.3	Amended	155	18	
20-138.7	Amended	155	4	
20-139.1	Amended	155	8	
20-140	Amended	109	7(b)	
20-141	Amended	109	7(c)	
20-179.3	Amended	155	7	
20-179.3	Amended	155	11	
20-179.3	Amended	155	12	
20-179.3	Amended	155	13	
20-183.2	Amended	134	7	
20-183.2	Amended	134	7.1	7/1/02
20-183.2	Amended	134	9	7/1/03
20-183.2	Amended	134	11	1/1/06
20-183.3	Amended	134	8	7/1/02
20-183.3	Amended	134	10	7/1/03
20-183.3	Amended	134	12	1/1/06
20-183.4A	Amended	134	13	7/1/02
20-183.4A	Amended	134	14	7/1/03
20-183.4A	Amended	134	15	1/1/06
20-183.5	Amended	134	16	7/1/02
20-183.5	Amended	134	17	1/1/06
20-183.7	Amended	75	3	7/1/01
20-183.8C	Amended	134	18	7/1/02
20-183.8C	Amended	134	19	1/1/06
20-309	Amended	140	100(a)	

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20-309	Amended	155	20	
23-30.1	Amended	144	32	7/1/01
24-1.1A	Amended	140	40(a), (b)	
24-1.1E	Amended	140	40.1	
24-5	Amended	133	8	
24-8	Amended	140	40(c)	
25A-16	Amended	169	31	7/1/01
25A-22	Amended	169	32	7/1/01
25-1-105	Amended	169	3	7/1/01
25-1-109	Amended	169	4	7/1/01
25-1-201	Amended	169	5	7/1/01
25-1-201	Amended	169	6	7/1/01
25-1-201	Amended	169	7	7/1/01
25-2A-103	Amended	169	13	7/1/01
25-2A-303	Amended	169	14	7/1/01
25-2A-307	Amended	169	15	7/1/01
25-2A-309	Amended	169	16	7/1/01
25-2-103	Amended	169	8	7/1/01
25-2-210	Amended	169	9	7/1/01
25-2-326	Amended	169	10	7/1/01
25-2-502	Amended	169	11	7/1/01
25-2-716	Amended	169	12	7/1/01
25-3-506	Amended	118	1	
25-4-208	Amended	169	17	7/1/01
25-5-118	Added	169	18	7/1/01
25-6-102	Amended	169	19	7/1/01
25-7-503	Amended	169	20	7/1/01
25-8-103	Amended	169	21	7/1/01
25-8-106	Amended	169	22	7/1/01
25-8-110	Amended	169	23	7/1/01
25-8-301	Amended	169	24	7/1/01
25-8-302	Amended	169	25	7/1/01
25-8-510	Amended	169	26	7/1/01
25-9-101	Amended	169	1	7/1/01
25-9-102	Amended	169	1	7/1/01
25-9-103	Amended	169	1	7/1/01
25-9-103.1	Amended	169	1	7/1/01
25-9-104	Amended	169	1	7/1/01
25-9-105	Amended	169	1	7/1/01
25-9-106	Amended	169	1	7/1/01
25-9-107	Amended	169	1	7/1/01
25-9-108	Amended	169	1	7/1/01
25-9-109	Amended	169	1	7/1/01
25-9-110	Amended	169	1	7/1/01
25-9-201	Amended	169	1	7/1/01
25-9-202	Amended	169	1	7/1/01
25-9-203	Amended	169	1	7/1/01
25-9-204	Amended	169	1	7/1/01
25-9-205	Amended	169	1	7/1/01
25-9-206	Amended	169	1	7/1/01
25-9-207	Amended	169	1	7/1/01
25-9-208	Amended	169	1	7/1/01
25-9-209	Added	169	1	7/1/01
25-9-210	Added	169	1	7/1/01
25-9-301	Amended	169	1	7/1/01
25-9-302	Amended	169	1	7/1/01
25-9-303	Amended	169	1	7/1/01
25-9-304	Amended	169	1	7/1/01
25-9-305	Amended	169	1	7/1/01

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25-9-306	Amended	169	1	7/1/01
25-9-307	Amended	169	1	7/1/01
25-9-308	Amended	169	1	7/1/01
25-9-309	Amended	169	1	7/1/01
25-9-310	Amended	169	1	7/1/01
25-9-311	Amended	169	1	7/1/01
25-9-312	Amended	169	1	7/1/01
25-9-313	Amended	169	1	7/1/01
25-9-314	Amended	169	1	7/1/01
25-9-315	Amended	169	1	7/1/01
25-9-316	Amended	169	1	7/1/01
25-9-317	Amended	169	1	7/1/01
25-9-318	Amended	169	1	7/1/01
25-9-319	Added	169	1	7/1/01
25-9-320	Added	169	1	7/1/01
25-9-321	Added	169	1	7/1/01
25-9-322	Added	169	1	7/1/01
25-9-323	Added	169	1	7/1/01
25-9-324	Added	169	1	7/1/01
25-9-324.1	Added	169	1	7/1/01
25-9-325	Added	169	1	7/1/01
25-9-326	Added	169	1	7/1/01
25-9-327	Added	169	1	7/1/01
25-9-328	Added	169	1	7/1/01
25-9-329	Added	169	1	7/1/01
25-9-330	Added	169	1	7/1/01
25-9-331	Added	169	1	7/1/01
25-9-332	Added	169	1	7/1/01
25-9-333	Added	169	1	7/1/01
25-9-334	Added	169	1	7/1/01
25-9-335	Added	169	1	7/1/01
25-9-336	Added	169	1	7/1/01
25-9-337	Added	169	1	7/1/01
25-9-338	Added	169	1	7/1/01
25-9-339	Added	169	1	7/1/01
25-9-340	Added	169	1	7/1/01
25-9-341	Added	169	1	7/1/01
25-9-342	Added	169	1	7/1/01
25-9-401	Amended	169	1	7/1/01
25-9-402	Amended	169	1	7/1/01
25-9-403	Amended	169	1	7/1/01
25-9-403	Amended	169	45	
25-9-404	Amended	169	1	7/1/01
25-9-405	Amended	169	1	7/1/01
25-9-405	Amended	169	46	
25-9-406	Amended	169	1	7/1/01
25-9-406	Amended	169	47	
25-9-407	Amended	169	1	7/1/01
25-9-407	Amended	169	48	
25-9-408	Amended	169	1	7/1/01
25-9-409	Added	169	1	7/1/01
25-9-501	Amended	169	1	7/1/01
25-9-502	Amended	169	1	7/1/01
25-9-503	Amended	169	1	7/1/01
25-9-504	Amended	169	1	7/1/01
25-9-505	Amended	169	1	7/1/01
25-9-506	Amended	169	1	7/1/01
25-9-507	Amended	169	1	7/1/01
25-9-508	Amended	169	1	7/1/01

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25-9-509	Amended	169	1	7/1/01
25-9-510	Added	169	1	7/1/01
25-9-511	Added	169	1	7/1/01
25-9-512	Added	169	1	7/1/01
25-9-513	Added	169	1	7/1/01
25-9-514	Added	169	1	7/1/01
25-9-515	Added	169	1	7/1/01
25-9-516	Added	169	1	7/1/01
25-9-517	Added	169	1	7/1/01
25-9-518	Added	169	1	7/1/01
25-9-519	Added	169	1	7/1/01
25-9-520	Added	169	1	7/1/01
25-9-521	Added	169	1	7/1/01
25-9-521	Amended	169	2(a)-(c)	7/1/01
25-9-522	Added	169	1	7/1/01
25-9-523	Added	169	1	7/1/01
25-9-524	Added	169	1	7/1/01
25-9-525	Added	169	1	7/1/01
25-9-526	Added	169	1	7/1/01
25-9-601	Amended	169	1	7/1/01
25-9-602	Amended	169	1	7/1/01
25-9-603	Amended	169	1	7/1/01
25-9-604	Amended	169	1	7/1/01
25-9-605	Amended	169	1	7/1/01
25-9-606	Amended	169	1	7/1/01
25-9-607	Amended	169	1	7/1/01
25-9-608	Added	169	1	7/1/01
25-9-609	Added	169	1	7/1/01
25-9-610	Added	169	1	7/1/01
25-9-611	Added	169	1	7/1/01
25-9-612	Added	169	1	7/1/01
25-9-613	Added	169	1	7/1/01
25-9-614	Added	169	1	7/1/01
25-9-615	Added	169	1	7/1/01
25-9-616	Added	169	1	7/1/01
25-9-617	Added	169	1	7/1/01
25-9-618	Added	169	1	7/1/01
25-9-619	Added	169	1	7/1/01
25-9-620	Added	169	1	7/1/01
25-9-621	Added	169	1	7/1/01
25-9-622	Added	169	1	7/1/01
25-9-623	Added	169	1	7/1/01
25-9-624	Added	169	1	7/1/01
25-9-625	Added	169	1	7/1/01
25-9-626	Added	169	1	7/1/01
25-9-627	Added	169	1	7/1/01
25-9-628	Added	169	1	7/1/01
25-9-701	Added	169	1	7/1/01
25-9-702	Added	169	1	7/1/01
25-9-703	Added	169	1	7/1/01
25-9-704	Added	169	1	7/1/01
25-9-705	Added	169	1	7/1/01
25-9-706	Added	169	1	7/1/01
25-9-707	Added	169	1	7/1/01
25-9-708	Added	169	1	7/1/01
25-9-709	Added	169	1	7/1/01
25-9-710	Added	169	1	7/1/01
29-30	Amended	169	1	7/1/01
30-1	Repealed	178	3	1/1/01
		178	1	1/1/01

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30-2	Repealed	178	1	1/1/01
30-3	Repealed	178	1	1/1/01
30-3.1	Added	178	2	1/1/01
30-3.2	Added	140	92	
30-3.2	Added	178	2	1/1/01
30-3.3	Added	178	2	1/1/01
30-3.4	Added	178	2	1/1/01
30-3.5	Added	178	2	1/1/01
30-3.6	Added	178	2	
30-15	Amended	178	4	
31A-1	Amended	178	6	
31B-4	Amended	140	8	
31C-3	Amended	178	7	
31-5.3	Amended	178	5	
35A-1107	Amended	144	33	7/1/01
35A-1130	Amended	144	34	7/1/01
36A-115	Amended	147	7	
40A-3	Amended	146	8	
40A-5	Amended	146	9	
42A-19	Amended	140	41	
43-22	Amended	140	42(a)	
43-25	Amended	140	42(b)	
43-31	Amended	140	42(c)	
43-35	Amended	140	42(d)	
43-36	Amended	140	42(e)	
43-38	Amended	140	42(f)	
43-39	Amended	140	42(g)	
43-42	Amended	140	42(h)	
43-44	Amended	140	42(i)	
43-46	Amended	140	9	
44-51.8	Amended	15	3	
44-51.8	Amended	107	1	
44-68.14	Amended	169	33	7/1/01
44-68.14	Amended	169	34	7/1/01
47-20	Amended	169	35	7/1/01
47-30	Amended	140	93.1(b)	
50B-3	Amended	125	9	
51-1	Amended	58	1	
53-177	Amended	169	36	7/1/01
55A-5-01	Amended	140	101(d)	
55A-5-04	Amended	140	46	
55A-11-09	Amended	140	48	
55A-15-07	Amended	140	101(e)	
55B-2	Amended	115	4	
55B-6	Amended	115	5	
55B-9	Amended	140	101(f)	
55B-14	Amended	115	6	
55-5-01	Amended	140	101(a)	
55-5-04	Amended	140	43	
55-9-05	Amended	140	44	
55-9A-09	Amended	140	47	
55-10-03	Amended	140	101(b)	
55-11-10	Amended	140	45	
55-15-07	Amended	140	101(c)	
57C-1-03	Amended	140	101(t)	
57C-1-20	Amended	140	101(t)	
57C-2-20	Amended	140	10(a), (b)	
57C-2-21	Amended	140	101(t)	
57C-2-22	Amended	140	101(t)	

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57C-2-22.1	Amended	140	101(t)	
57C-2-34	Amended	140	101(t)	
57C-2-40	Amended	140	101(g)	
57C-2-43	Amended	140	49	
57C-3-01	Amended	140	101(t)	
57C-3-05	Amended	140	101(t)	
57C-3-20	Amended	140	101(t)	
57C-3-32	Amended	140	101(t)	
57C-5-06	Amended	140	101(t)	
57C-5-07	Amended	140	101(t)	
57C-6-01	Amended	140	101(t)	
57C-6-02	Amended	140	101(t)	
57C-6-02.1	Amended	140	101(t)	
57C-6-02.2	Amended	140	101(t)	
57C-6-02.3	Amended	140	101(t)	
57C-7-04	Amended	140	50	
57C-7-07	Amended	140	101(h)	
57C-7-12	Amended	140	101(i)	
57C-9A-23	Amended	140	51	
58-2-25	Amended	122	4	
58-2-40	Amended	19	3	
58-3-100	Amended	162	4(b)	
58-3-172	Amended	162	4(c)	
58-3-225	Added	162	4(a)	7/1/01
58-6-25	Amended	140	93.1(a)	
58-7-70	Amended	140	11	
58-28-15	Amended	140	12	
58-30-10	Amended	140	13	
58-30-55	Amended	140	14	
58-31-40	Amended	122	10	
58-33-30	Amended	122	3	
58-33-32	Added	122	2	
58-33-125	Amended	122	1	
58-36-10	Amended	176	1	
58-40-25	Amended	176	2	
58-42-45	Amended	140	15	
58-45-6	Added	122	5	
58-46-2	Added	122	6	
58-50-1	Amended	140	16	
58-51-15	Amended	162	4(d)	
58-51-80	Amended	132	1	
58-69-2	Amended	122	7	
58-71-1	Amended	180	1	
58-71-1	Amended	180	2	
58-71-25	Amended	133	7	
58-71-41	Added	180	3	
58-71-80	Amended	180	4	
58-71-95	Amended	180	5	
58-71-100	Amended	180	6	
58-71-121	Added	180	7	
58-71-145	Amended	180	8	
58-71-185	Amended	180	9	
58-84-45	Repealed	67	26.21(a)	
58-84-46	Added	67	26.21(b)	
58-85A-1	Amended	140	93.1(a)	
58-86-25	Amended	67	26.22	
58-86-45	Amended	67	26.17(a)	
58-86-55	Amended	67	26.18	
59-31	Amended	140	101(j)	

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59-32	Amended	140	101(k)	
59-33	Amended	140	101(n)	
59-34	Amended	140	101(l)	
59-35	Amended	140	101(m)	
59-41	Amended	140	101(n)	
59-55	Amended	140	101(n)	
59-58	Amended	140	101(n)	
59-73.6	Amended	140	52	
59-77	Amended	140	101(o)	
59-84.2	Amended	140	53	
59-84.2	Amended	140	101(p)	
59-91	Amended	140	54	
59-105	Amended	140	101(q)	
59-201	Amended	140	17	
59-902	Amended	140	55	
59-907	Amended	140	101(r)	
59-1053	Amended	140	101(s)	
62A-5	Amended	173	19(a)	
62A-25	Amended	140	93.1(b)	
62-54	Added	161	3	
62-302	Amended	140	56	
63A-4	Amended	67	25.3	
63A-11	Amended	169	37	7/1/01
66-58	Amended	137	4(f), (g)	
66-58	Amended	148	6	
66-58	Amended	177	10	
66-58.12	Added	109	8	
66-58.20	Added	67	7.9	
66-68	Amended	140	101(t)	
66-273	Amended	140	57	
66-291	Amended	140	58	
66-308.15	Amended	140	97	7/1/01
66-311	Added	152	1	
66-312	Added	152	1	
66-313	Added	152	1	
66-314	Added	152	1	
66-315	Added	152	1	
66-316	Added	152	1	
66-317	Added	152	1	
66-318	Added	152	1	
66-319	Added	152	1	
66-320	Added	152	1	
66-321	Added	152	1	
66-322	Added	152	1	
66-323	Added	152	1	
66-324	Added	152	1	
66-325	Added	152	1	
66-326	Added	152	1	
66-327	Added	152	1	
66-330	Added	152	1	
74C-4	Amended	181	2.3	
74-50	Amended	116	1	
74-51	Amended	116	2	
75-30.1	Added	161	2	
75A-13.3	Amended	52	1-4	
75A-41	Amended	169	38	7/1/01

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75A-42	Amended	169	39	7/1/01
75A-44	Amended	169	40	7/1/01
84-5	Amended	178	8	
85B-3.2	Amended	140	59(a), (b)	
87-10.1	Amended	140	19(b)	
87-22.2	Amended	140	19(b)	
87-44.2	Amended	140	19(b)	
87-98.4	Amended	140	19(b)	
87-98.12	Amended	140	19(b)	
89C-12	Amended	140	18	
89C-14	Amended	115	1	
89C-17	Amended	115	2	
89C-18.1	Amended	140	19(b)	
89C-24	Amended	115	3	
89F-6	Amended	115	7	
90-12	Amended	5	1	
90-14	Amended	184	5	
90-15	Amended	5	2	
90-15.1	Amended	5	3	
90-18	Amended	113	2	
90-18.4	Amended	140	19(b)	
90-21.8	Amended	144	35	7/1/01
90-21.14	Amended	5	4	
90-21.15	Added	113	1	
90-85.3	Amended	140	19(b)	
90-88	Amended	189	4	
90-89	Amended	140	92.2(a)	
90-91	Amended	140	92.2(b)	
90-92	Amended	140	92.2(c)	
90-95	Amended	140	92.2(d)	
90-116	Amended	189	5	
90-121.2	Amended	184	6	
90-139	Amended	181	2.7(a)	
90-140	Amended	189	6	
90-171.80	Amended	140	19(b)	
90-171.81	Amended	140	19(b)	
90-171.82	Amended	140	19(b)	
90-171.83	Amended	140	19(b)	
90-171.84	Amended	140	19(b)	
90-171.85	Amended	140	19(b)	
90-171.86	Amended	140	19(b)	
90-171.87	Amended	140	19(b)	
90-171.88	Amended	140	19(b)	
90-171.89	Amended	140	19(b)	
90-171.90	Amended	140	19(b)	
90-171.91	Amended	140	19(b)	
90-171.92	Amended	140	19(b)	
90-171.93	Amended	140	19(b)	
90-171.94	Amended	140	19(b)	
90-178.3	Amended	140	60	
90-223	Amended	189	7	
90-624	Amended	140	93	
90-646	Added	162	1	
90-646	Recodified	140	98	
90-647	Added	162	1	
90-647	Recodified	140	98	
90-648	Added	162	1	
90-648	Recodified	140	98	
90-649	Added	162	1	

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90-649	Recodified	140	98	
90-650	Added	162	1	
90-651	Added	162	1	
90-652	Added	162	1	
90-653	Added	162	1	
90-654	Added	162	1	
90-655	Added	162	1	
90-656	Added	162	1	
90-657	Added	162	1	
90-658	Added	162	1	
90-659	Added	162	1	
90-660	Added	162	1	
90-661	Added	162	1	
90-662	Added	162	1	
90-663	Added	162	1	
90-664	Added	162	1	
90-665	Added	162	1	
90-671	Added	110	1	
90-671	Amended	140	98	
90-672	Added	110	1	
90-672	Amended	140	98	
90-673	Added	110	1	
90-673	Amended	140	98	
90-674	Added	110	1	
90-674	Amended	140	98	
93A-1	Amended	140	19(b)	
93A-3	Amended	140	19(a)	
93A-4	Amended	140	19(b)	
93A-5	Amended	140	19(b)	
93A-9	Amended	140	19(b)	
93A-11	Amended	140	19(b)	
93A-16	Amended	140	19(b)	
93A-17	Amended	140	19(b)	
93A-22	Amended	140	19(b)	
93A-25	Amended	140	19(b)	
93A-32	Amended	140	19(b)	
93A-34	Amended	140	19(b)	
93A-35	Amended	140	19(b)	
93A-40	Amended	140	19(b)	
93A-41	Amended	140	19(b)	
93A-45	Amended	140	19(b)	
93A-50	Amended	140	19(b)	
93A-52	Amended	140	19(b)	
93A-54	Amended	140	19(b)	
93A-58	Amended	140	19(b)	
96-4	Amended	140	93.1(a)	
96-9	Amended	140	87	
96-31	Amended	140	93.1(c)	
96-32	Amended	140	93.1(e)	
96-35	Amended	140	93.1(a)	
97-13	Amended	146	11	
97-80	Amended	140	93.1(a)	
105A-13	Amended	126	6	
105-40	Amended	140	61	
105-88	Amended	120	3	
105-88	Amended	173	2	7/1/01
105-113.82	Amended	173	3	
105-113.84	Amended	173	4	
105-113.85	Amended	173	5	

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105-113.88	Amended	173	6	
105-113.106	Amended	119	3	
105-113.106	Amended	119	4	
105-113.108	Amended	119	5	
105-114	Amended	173	8	
105-116	Amended	140	62	
105-116.1	Amended	128	2	
105-119	Repealed	173	7	
105-120	Amended	173	19(b)	
105-120.1	Repealed	173	7	
105-129.2	Amended	56	5(a), (b)	
105-129.2	Amended	173	1(a)	
105-129.2A	Added	173	1(c)	
105-129.3A	Amended	173	1(a)	
105-129.3	Amended	73	1	
105-129.3	Amended	173	1(a)	
105-129.4	Amended	56	5(c)	
105-129.4	Amended	56	6	
105-129.4	Amended	56	8(c)	
105-129.4	Amended	140	92.A(a), (b)	
105-129.4	Amended	173	1(a)	
105-129.5	Amended	56	2	
105-129.5	Amended	173	1(a)	
105-129.6	Amended	56	1(a)	
105-129.6	Amended	173	1(a)	
105-129.7	Amended	56	5(d)	
105-129.7	Amended	173	1(a)	
105-129.8	Amended	56	8(a)	
105-129.8	Amended	140	92.A(b)	
105-129.8	Amended	173	1(a)	
105-129.9A	Amended	173	1(a)	
105-129.9	Amended	56	8(b)	
105-129.9	Amended	140	92.A(b)	
105-129.9	Amended	173	1(a)	
105-129.10	Amended	173	1(a)	
105-129.11	Amended	173	1(a)	
105-129.12	Amended	56	5(e)	
105-129.12	Amended	173	1(a)	
105-129.13	Amended	56	1(b)	
105-129.13	Amended	173	1(a)	
105-129.15A	Added	173	1(d)	
105-129.15	Amended	173	1(a)	
105-129.16B	Amended	56	7	
105-129.16B	Amended	140	88	
105-129.16C	Added	160	1	7/1/01
105-129.16	Amended	173	1(a)	
105-129.17	Amended	140	63(a)	
105-129.17	Amended	140	88	
105-129.17	Amended	173	1(a)	
105-129.18	Amended	140	63(b)	
105-129.18	Amended	140	88	
105-129.18	Amended	173	1(a)	
105-129.19	Amended	140	63(c)	
105-129.19	Amended	140	88	
105-129.19	Amended	173	1(a)	
105-130.4	Amended	126	5	
105-130.5	Amended	140	93.1(a)	
105-130.5	Amended	173	19(c)	
105-130.15	Amended	140	64(a)	

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105-130.17	Amended	140	64(b)	
105-130.18	Amended	140	64(c)	
105-130.28	Amended	128	1	
105-130.28	Repealed	128	3	1/1/06
105-134.6	Amended	140	65	
105-134.6	Amended	140	93.1(a)	
105-163.1	Amended	126	2	
105-163.2A	Amended	126	3	
105-163.15	Amended	126	4	
105-163.44	Repealed	140	66	
105-164.3	Amended	153	4	
105-164.3	Amended	173	9	
105-164.4	Amended	140	67(a)	
105-164.6A	Amended	120	4	
105-164.7	Amended	19	1.3	
105-164.13	Amended	120	5	
105-164.13	Amended	153	5	
105-164.14	Amended	56	9	
105-164.14	Amended	140	92.A(c)	
105-164.16	Amended	120	11	1/1/03
105-164.27A	Added	120	1	
105-164.28	Amended	120	6	
105-164.29	Amended	140	67(b)	
105-164.38	Amended	140	67(c)	
105-164.43A	Added	120	2	
105-164.43B	Added	120	2	
105-164.43C	Added	120	2	
105-164.44E	Added	19	1.1	4/1/03
105-187.1	Amended	173	10(a)	
105-187.5	Amended	173	10(b)	
105-187.6	Amended	140	68	
105-187.20	Amended	109	9(a)	
105-187.21	Amended	109	9(a)	
105-187.22	Amended	109	9(a)	
105-187.23	Amended	109	9(a)	
105-187.24	Amended	109	9(a)	
105-187.31	Amended	19	1.2	10/1/01
105-228.30	Amended	16	1	
105-228.35	Amended	170	1	
105-228.37	Added	170	2	
105-228.90	Amended	72	1	
105-228.90	Amended	126	1	
105-228.90	Amended	140	69	
105-236	Amended	119	2	
105-236	Amended	120	7	
105-236	Amended	140	70	
105-236.1	Amended	119	1	
105-241.1	Amended	140	88	
105-259	Amended	120	8	
105-259	Amended	173	11	
105-262	Amended	140	93.1(a)	
105-269.13	Added	120	9	
105-269.14	Repealed	120	10	1/1/03
105-275	Amended	2	1	
105-275	Amended	18	1	
105-275	Amended	140	71	
105-275	Amended	140	72(a)	
105-277.13	Added	158	1	7/1/01
105-278.6A	Repealed	20	2	

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105-282.1	Amended	140	72(b)	
105-288	Amended	67	7.11	
105-330.1	Amended	140	75(a)	
105-369	Amended	140	73	
105-449.37	Amended	140	74	
105-449.44	Amended	173	12	
105-449.60	Amended	173	13(a)	
105-449.60	Amended	173	14(a)	
105-449.68	Amended	173	14(b)	
105-449.88	Amended	72	2(b)	
105-449.88	Amended	173	13(b)	
105-449.88	Amended	173	15	
105-449.97	Amended	173	14(c)	
105-449.105A	Amended	173	17	
105-449.105	Amended	173	16	
105-449.121	Amended	173	18	
105-466	Amended	120	12	
106-65.23	Amended	175	1	
106-130	Amended	67	7.10	
106-744	Amended	171	1	
106-744	Amended	171	2	
108A-27.8	Amended	140	93.1(a)	
108A-70.18	Amended	67	11.8(a)	
108A-70.18	Amended	140	90(d)	
108A-103	Amended	131	1	
108A-105	Amended	144	36	7/1/01
110-109	Added	67	11.27(b)	
110-136.3	Amended	140	20(b)	
111-4	Amended	121	1	
111-5	Repealed	121	2	
111-6	Amended	121	3	
111-6.1	Amended	121	4	
111-7	Amended	121	5	
111-8	Amended	121	6	
111-8.1	Repealed	121	7	
111-11	Amended	121	8	
111-11.1	Added	121	9	
111-12.6	Amended	121	10	
111-13	Amended	121	11	
111-14	Amended	121	12	
111-15	Amended	121	13	
111-16	Amended	121	14	
111-18.1	Amended	121	15	
111-27	Amended	121	16	
111-27.1	Amended	121	17	
111-28	Amended	121	18	
111-28.1	Amended	121	19	
111-41	Amended	121	20	
111-42	Amended	121	21	
111-43	Amended	121	22	
111-44	Amended	121	23	
111-45	Amended	121	24	
111-46	Amended	121	25	
111-49	Amended	121	26	
111-50	Amended	121	27	
113-34.1	Added	157	3	
113-55.2	Amended	189	8	
113-169.1	Amended	172	6	
113-173	Amended	139	1	

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113-221	Amended	189	9	
113-229	Amended	172	3	
113-275	Amended	189	10	
113A-115	Amended	189	11	
113A-120	Amended	172	2	
113A-120.2	Amended	140	92.1(a)	
113A-120.2	Amended	172	2	
113A-240	Added	23	2	
113A-241	Added	23	2	
113A-241	Amended	23	3	
113B-2	Amended	140	76(a)	
113B-6	Amended	140	76(b)	
113B-7	Amended	140	76(c)	
113B-11	Amended	140	76(d)	
114-4.2D	Amended	140	76(e)	
114-10	Amended	67	17.2(a)	
114-18.1	Repealed	119	6	
114-19	Amended	119	7	
114-19.3	Amended	154	5	
114-19.6	Amended	137	4(h)	
114-19.8	Amended	140	59(c)	
114-19.10	Added	154	1	
114-21	Amended	137	4(i)	
115C-47	Amended	67	8.18(b)	
115C-47	Amended	140	77	
115C-105.27	Amended	67	8.1	
115C-105.46	Amended	140	22	
115C-110	Amended	137	4(j)	
115C-111	Amended	137	4(k)	
115C-113	Amended	137	4(l)	
115C-113.1	Amended	137	4(m)	
115C-115	Amended	137	4(n)	
115C-121	Amended	137	4(o)	
115C-139	Amended	137	4(p)	
115C-174.11	Amended	140	21(a), (b)	
115C-238.29D	Amended	67	8.23	
115C-238.29J	Amended	72	3	
115C-296.2	Added	67	28.5	
115C-250	Amended	137	4(q)	
115C-296	Amended	67	9.2(a)	
115C-296.2	Added	67	8.16	
115C-307	Amended	67	8.18(a)	
115C-325	Amended	67	8.24(b)	
115C-325	Amended	137	4(r)	
115C-325	Amended	140	23	
115C-325	Amended	140	24	
115C-404	Amended	140	25	
115C-457.1	Amended	140	93.1(a)	
115C-457.2	Amended	140	93.1(a)	
115C-457.3	Amended	140	93.1(a)	
115C-472.10	Added	159	8	
115C-489.5	Added	69	1	
115C-489.6	Added	69	1	
115C-546.1	Amended	140	93.1(a)	
115D-1	Amended	137	4(s)	
115D-5	Amended	137	4(t)	
115D-31	Amended	140	93.1(a)	
115D-31.3	Amended	67	9.7	
115D-39	Amended	67	9.8	

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115D-58.5	Amended	67	7(c)	
115E	Repealed	179	1	
115E-1	Repealed	179	1	
115E-2	Repealed	179	1	
115E-3	Repealed	179	1	
115E-4	Repealed	179	1	
115E-5	Repealed	179	1	
115E-6	Repealed	179	1	
115E-7	Repealed	179	1	
115E-8	Repealed	179	1	
115E-9	Repealed	179	1	
115E-10	Repealed	179	1	
115E-11	Repealed	179	1	
115E-12	Repealed	179	1	
115E-13	Repealed	179	1	
115E-14	Repealed	179	1	
115E-15	Repealed	179	1	
115E-16	Repealed	179	1	
115E-17	Repealed	179	1	
115E-18	Repealed	179	1	
115E-19	Repealed	179	1	
115E-20	Repealed	179	1	
115E-21	Repealed	179	1	
115E-22	Repealed	179	1	
115E-23	Repealed	179	1	
116-14	Amended	140	26	
116-36.5	Amended	177	1	
116-36.5	Amended	177	2	
116-189	Amended	168	4	
116-189	Amended	168	5	
116-198.31	Amended	177	3	
116-198.31	Amended	177	4	
116-198.33	Amended	177	5	
116-198.34	Amended	177	6	
116-198.35	Amended	177	7	
116-198.37	Amended	177	8	
116-209.25	Amended	177	11	7/1/01
116-220	Amended	140	93.1(a)	
116B-66	Amended	140	27	
116D	Added	3	1	
116D-1	Added	3	1	
116D-2	Added	3	1	
116D-3	Added	3	1	
116D-4	Added	3	7(a), (b)	
116D-5	Added	3	4(a)-(h)	
116D-6	Added	3	1	
116D-7	Added	3	1	
116D-8	Added	3	1	
116D-9	Added	3	1	
116D-10	Added	3	1	
116D-11	Added	3	1	
116D-12	Added	3	1	
116D-13	Added	3	1	
116D-21	Added	3	1	
116D-22	Added	3	1	
116D-23	Added	3	1	
116D-24	Added	3	1	
116D-25	Added	3	1	
116D-26	Added	3	1	

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116D-27	Added	3	1	
116D-28	Added	3	1	
116D-29	Added	3	1	
116D-30	Added	3	1	
116D-31	Added	3	1	
116D-41	Added	3	1	
116D-42	Added	3	1	
116D-43	Added	3	1	
116D-44	Added	3	1	
116D-45	Added	3	1	
116D-46	Added	3	1	
116D-47	Added	3	1	
116D-48	Added	3	1	
116D-49	Added	3	1	
120-4.22A	Amended	67	26.20(f)	
120-9	Amended	140	28	
120-30.45	Amended	140	93.1(a)	
120-30.49	Amended	140	93.1(a)	
120-36.8	Amended	140	93.1(a)	
120-37	Amended	67	26.7	
120-37	Amended	67	26.8	
120-123	Amended	147	5	
120-123	Amended	148	2	
120-123	Amended	149	2	
120-123	Amended	149	5	
120-123	Amended	162	2	
120-131.1	Amended	140	93.1(a)	
120-166	Amended	140	93.1(a)	
120-216	Amended	137	4(u)	
120-240	Added	83	2	
120-240	Added	83	2	
120-241	Added	83	2	
120-242	Added	83	2	
120-246	Amended	138	8.1(a)	
122A-5.13	Amended	67	11.10	
122A-16	Amended	140	93.1(a)	
122C-3	Amended	67	11.21(c)	
122C-3	Amended	137	3	
122C-5	Added	129	3(b)	
122C-22	Amended	67	11.25A	
122C-23	Amended	55	3	
122C-24.1	Added	55	4	
122C-26	Amended	55	5	
122C-31	Added	129	3(a)	
122C-60	Amended	129	1	
122C-80	Added	154	4	
122C-112	Amended	67	11.21(d)	
122C-112	Amended	140	93.1(a)	
122C-113	Amended	137	4(v)	
122C-117	Amended	137	4(w)	
122C-120	Amended	67	11.18	
122C-185	Amended	140	93.1(a)	
122C-194—122C-200	Repealed	67	11.21(e)	
122C-224.1	Amended	144	37	
122C-267	Amended	144	38	7/1/01
122C-268	Amended	144	39	7/1/01
122C-268.1	Amended	144	40	7/1/01
122C-269	Amended	144	41	7/1/01
122C-270	Amended	144	42	7/1/01

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122C-286	Amended	144	43	7/1/01
122C-286.1	Amended	144	44	7/1/01
124-1	Amended	146	2	
124-1	Added	146	6	
124-3	Amended	67	7.2(b)	
124-3	Amended	146	2	
124-3	Amended	146	3	
124-4	Repealed	146	4	
124-5	Amended	146	5	
124-5.1	Added	67	7.2(a)	
124-11	Added	146	7	
124-12	Added	146	7	
124-13	Added	146	7	
126-2	Amended	140	29	
126-5	Amended	137	4(nn)	
126-5	Amended	147	4	
126-5	Amended	148	3	
126-35	Amended	190	13	
127A-193	Amended	67	18	
128-27	Amended	67	26.20(g)-(j)	
130A-5.1	Added	67	11	
130A-29	Amended	112	6	
130A-125	Amended	67	11.31(a)	
130A-131.15	Amended	67	11.40	
130A-190	Amended	163	2	
130A-197	Amended	163	4	
130A-250	Amended	82	1	7/1/01
130A-309.12	Amended	109	9(a)	
130A-309.29	Amended	189	12	
130A-309.81	Amended	109	9(a)	
130A-309.82	Amended	109	9(a)	
130A-309.83	Amended	109	9(a)	
130A-309.85	Amended	109	9(a)	
130A-310.34	Amended	158	2	
130A-315	Amended	172	1	
130A-385	Amended	129	4	
130B-8	Amended	189	13	
131A-21	Amended	20	1	
131D-2	Amended	140	30	
131D-4.2	Amended	140	93.1(a)	
131D-4.3	Amended	111	1	
131D-4.5	Amended	111	2	
131D-9	Amended	112	2	9/1/01
131D-9	Added	112	1	
131D-10.4	Amended	137	4(gg)	
131D-10.5A	Added	129	2(b)	
131D-10.5	Amended	129	2(a)	
131D-10.6	Amended	129	5(b)	
131D-10.6A	Amended	67	11.14(c)	
131D-10.6B	Added	129	5(a)	
131D-21	Amended	111	3	
131D-34.1	Added	129	6(a)	
131D-40	Amended	154	2(a), (b)	
131D-42	Added	129	6(b)	
131E-13	Amended	140	93.1(a)	
131E-104	Amended	154	6	
131E-113	Amended	112	4	9/1/01
131E-113	Added	112	3	
131E-114	Added	154	6	

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131E-176	Amended	135	1	
131E-176	Amended	135	2	
131E-256	Amended	55	1	
131E-256.1	Added	55	2	
131E-265	Amended	154	3(a), (b)	
132-6.1	Amended	71	1	
135-1.1	Amended	187	1	
135-3	Amended	67	8.24(a)	
135-5	Amended	67	26.20(a)-(e)	
135-16.1	Amended	121	28	
135-39.3	Amended	140	93.1(a)	
135-39.4A	Amended	141	2	
135-39.5	Amended	141	3	
135-40.2	Amended	141	6(a), (b)	
135-40.2	Amended	184	1(a), (b)	
135-40.2	Amended	184	3	
135-40.5	Amended	141	1	
135-40.5	Amended	184	2	
135-40.6A	Amended	141	4	
135-40.7	Amended	141	5	
135-40.11	Amended	184	4	
135-65	Amended	67	26.20	
136-17.2A	Amended	134	22	
136-18	Amended	123	1	
136-18	Amended	140	102	
136-19.4	Amended	68	1	
136-41.1	Amended	165	1	
136-44.20	Amended	67	25.7	
136-66.3	Amended	188	1	
136-89.171	Added	145	1	
136-89.172	Added	145	1	
136-125.1	Added	159	9(a)	
136-125.2	Added	159	9(a)	
136-128	Amended	101	3	
136-129	Amended	101	3	
136-176	Amended	140	31	
136-200	Amended	80	1	
136-200	Amended	80	2	
136-200	Amended	80	3	
136-200.1	Added	80	4	
136-200.2	Added	80	5	
136-200.3	Added	80	6	
136-200.4	Added	80	7	
136-210	Added	123	2	
136-211	Added	123	2	
136-212	Added	123	2	
136-213	Added	123	2	
138-6	Amended	140	93.1(a)	
138-8	Amended	140	93.1(a)	
143-1	Amended	140	93.1(a)	
143-2	Amended	140	93.1(a)	
143-3.1	Amended	140	93.1(i)	
143-3.5	Amended	140	93.1(f)	
143-4	Amended	140	93.1(a)	
143-6	Amended	140	93.1(a)	
143-6.1	Amended	140	93.1(a)	
143-10.1A	Amended	140	93.1(a)	
143-10.2	Amended	140	93.1(a)	
143-10.3	Amended	140	93.1(a)	

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143-10.4	Amended	140	93.1(a)	
143-10.5	Amended	140	93.1(a)	
143-10.7	Amended	140	93.1(a)	
143-11	Amended	67	15.7	
143-12.1	Amended	140	93.1(a)	
143-15.2	Amended	67	7.7(e)	6/30/01
143-15.3B	Amended	67	7.7(b)	7/1/01
143-15.3B	Amended	67	7.7(c)	7/1/02
143-15.3B	Amended	67	7.7(d)	7/1/03
143-15.3	Amended	67	7.7(f)	6/30/01
143-15.4	Amended	140	93.1(a)	
143-16.4	Amended	147	1	
143-19	Amended	140	93.1(a)	
143-20.1	Amended	67	7(a)	
143-20.1	Amended	140	93.1(a)	
143-27	Amended	140	93.1(a)	
143-28.1	Amended	140	93.1(a)	
143-31.1	Amended	140	93.1(a)	
143-31.5	Amended	140	93.1	
143-34.2	Amended	140	93.1(a)	
143-34.41	Amended	140	93.1(a)	
143-34.43	Amended	140	93.1(a)	
143-34.44	Amended	140	93.1(a)	
143-48.3	Added	140	95(a)	
143-49	Amended	67	10.9(a)	
143-64.12	Amended	140	76(f)	
143-138	Amended	137	4(x)	
143-138	Amended	140	93.1(a)	
143-143.11A	Amended	122	9	
143-143.12	Amended	122	8	
143-151.57	Amended	140	32	
143-162.2	Added	153	3	
143-166.2	Amended	137	4(y)	
143-214.24	Added	172	5	
143-215.51	Amended	150	1	
143-215.51	Amended	150	1	
143-215.52	Amended	150	1	
143-215.53	Repealed	150	1	
143-215.54A	Added	150	1	
143-215.54	Amended	150	1	
143-215.55	Amended	150	1	
143-215.56	Amended	150	1	
143-215.57	Amended	150	1	
143-215.58	Amended	150	1	
143-215.59	Amended	150	1	
143-215.60	Amended	150	1	
143-215.61	Amended	150	1	
143-215.85	Amended	54	1	
143-215.94E	Amended	172	7	
143-215.94P	Amended	140	93.1(a)	
143-215.104B	Amended	19	3	
143-215.104C	Amended	19	2	
143-215.104C	Amended	19	5	
143-215.104C	Amended	19	5.1	7/1/01
143-215.104C	Amended	19	5.2	7/1/02
143-215.104C	Amended	19	5.3	7/1/03
143-215.104D	Amended	19	6	
143-215.104E	Repealed	19	3	
143-215.104F	Amended	19	3	

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143-215.104F	Amended	19	4	
143-215.104F	Amended	19	7	
143-215.104G	Amended	19	8	
143-215.104H	Amended	19	9	
143-215.104I	Amended	19	10	
143-215.104I	Amended	19	11	
143-215.104I	Amended	19	13	
143-215.104J	Amended	19	3	
143-215.104N	Amended	19	12	
143-215.104N	Amended	19	14(a), (b)	
143-215.104O	Amended	19	15	
143-215.104P	Amended	19	3	
143-215.104S	Amended	19	16	
143-215.107A	Amended	134	2	
143-215.107A	Amended	134	3	
143-215.107	Amended	134	1	
143-291	Amended	67	7A(a), (b)	
143-291.3	Amended	67	7A(c)	
143-299.2	Amended	67	7A(d)	
143-299.4	Added	67	7A(e)	
143-300.1	Amended	67	7A(f), (g)	
143-300.6	Amended	67	7A(h)	
143-300.16	Amended	67	7A(i)	
143-334	Added	140	76(h)	
143-341	Amended	140	76(g)	
143-341	Amended	153	2	
143-345.13	Added	140	76(i)	
143-345.14	Added	140	76(i)	
143-345.16	Added	140	76(i)	
143-345.17	Added	140	76(i)	
143-345.18	Added	140	76(i)	
143-345.24	Amended	140	93.1(a)	
143-621—143-639	Repealed	67	21.2(a)	
143-715	Added	147	3	
143-715	Added	147	3	
143-716	Added	147	3	
143-717	Added	147	3	
143-718	Added	147	3	
143-719	Added	147	3	
143-720	Added	147	3	
143-721	Added	147	3	
143-722	Added	147	3	
143-723	Added	147	3	
143B-2	Amended	137	4(ll)	
143B-6	Amended	137	4(mm)	
143B-58—143B-61.1	Repealed	140	78	
143B-59	Repealed	140	78	
143B-60	Repealed	140	78	
143B-61	Repealed	140	78	
143B-61.1	Repealed	140	78	
143B-131.6	Amended	181	2.4	
143B-133.1	Amended	140	93.1(a)	
143B-150.5	Amended	137	4(z)	
143B-150.7	Amended	137	4(aa)	
143B-150.20	Amended	67	11.14(a)	
143B-152.6	Amended	137	4(bb)	
143B-152.14	Amended	137	4(cc)	
143B-153	Amended	111	4	
143B-153	Amended	137	4(dd)	

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143B-153	Amended	140	99(a)	
143B-157	Amended	121	29	
143B-157	Amended	121	30	
143B-158	Amended	121	31	
143B-163	Amended	121	32	
143B-168.12	Amended	67	11.28(a)	
143B-168.13	Amended	67	11.28(b)	
143B-168.15	Amended	67	11.28(c), (d)	
143B-181.10	Amended	50	1	
143B-270	Amended	140	33	
143B-273.8	Amended	67	16	
143B-279.9	Amended	51	1	
143B-279.10	Amended	51	2	
143B-283	Amended	172	4	
143B-283	Amended	172	4	
143B-336.1	Amended	140	93.1(a)	
143B-372.3	Amended	140	93.1(g)	
143B-387.1	Added	67	23.1	
143B-417	Amended	137	4(oo)	
143B-426.22	Amended	137	4(pp)	
143B-426.39	Amended	67	7(b)	
143B-426.39	Amended	140	93.1(a)	
143B-431.2	Added	56	4	
143B-433	Amended	140	76(j)	
143B-434.1	Amended	140	79(a)	
143B-434.2	Amended	140	79(b)	
143B-434.3	Amended	140	79(c)	
143B-434.3	Added	153	1	
143B-437.01	Amended	56	3(b)	
143B-437.20	Added	148	1	
143B-437.21	Added	148	1	
143B-437.22	Added	148	1	
143B-437.23	Added	148	1	
143B-437.25	Added	148	1	
143B-437.26	Added	148	1	
143B-437.27	Added	148	1	
143B-437.28	Added	148	1	
143B-437.29	Added	148	1	
143B-437.30	Added	148	1	
143B-437.31	Added	148	1	
143B-437.32	Added	148	1	
143B-437.33	Added	148	1	
143B-437.40	Added	148	1	
143B-437.41	Added	149	1	
143B-437.42	Added	149	1	
143B-437.43	Added	149	1	
143B-448— 143B-450.1	Repealed	140	76(k)	
143B-449	Repealed	140	76	
143B-450	Repealed	140	76	
143B-450.1	Repealed	140	76	
143B-456.1	Amended	169	41	7/1/01
143B-472.30— 143B-472.34	Repealed	140	76(k)	
143B-472.40A	Repealed	174	1	
143B-472.40	Repealed	174	1	
143B-472.41A	Repealed	174	1	
143B-472.41	Amended	140	93.1(a), (c), (l)	

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143B-472.41	Repealed	174	1	
143B-472.42	Repealed	174	1	
143B-472.43	Repealed	174	1	
143B-472.44	Repealed	174	1	
143B-472.45	Repealed	174	1	
143B-472.46	Repealed	174	1	
143B-472.47	Repealed	174	1	
143B-472.48	Repealed	174	1	
143B-472.49	Repealed	174	1	
143B-472.50	Repealed	174	1	
143B-472.51	Amended	130	1	
143B-472.51	Repealed	174	1	
143B-472.52	Amended	140	93.1(a), (h)	
143B-472.52	Repealed	174	1	
143B-472.53	Repealed	174	1	
143B-472.54	Amended	130	2	
143B-472.54	Repealed	174	1	
143B-472.55	Repealed	174	1	
143B-472.56	Repealed	174	1	
143B-472.57	Repealed	174	1	
143B-472.58	Amended	130	3	
143B-472.58	Repealed	174	1	
143B-472.59	Repealed	174	1	
143B-472.60	Repealed	174	1	
143B-472.61	Repealed	174	1	
143B-472.62	Repealed	174	1	
143B-472.63	Amended	130	4	
143B-472.63	Repealed	174	1	
143B-472.64	Amended	140	93.1(a)	
143B-472.64	Repealed	174	1	
143B-472.65	Repealed	174	1	
143B-472.66	Repealed	174	1	
143B-472.67	Repealed	174	1	
143B-472.70	Added	67	7.8	
143B-472.70	Repealed	140	95(a), (b)	
143B-478	Amended	137	4(ee)	
143B-511	Added	137	1(b)	
143B-512	Added	137	1(b)	
143B-515	Added	137	1(b)	
143B-516	Added	137	1(b)	
143B-517	Added	137	1(b)	
143B-518	Added	137	1(b)	
143B-519	Added	137	1(b)	
143B-525	Added	137	1(b)	
143B-526	Added	137	1(b)	
143B-527	Added	137	1(b)	
143B-528	Added	137	1(b)	
143B-529	Added	137	1(b)	
143B-530	Added	137	1(b)	
143B-531	Added	137	1(b)	
143B-535	Added	137	1(b)	
143B-536	Added	137	1(b)	
143B-540	Added	137	1(b)	
143B-543	Added	137	1(b)	
143B-544	Added	137	1(b)	
143B-545	Added	137	1(b)	
143B-546	Added	137	1(b)	
143B-547	Added	137	1(b)	
143B-548	Added	137	1(b)	

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143B-549	Added	137	1(b)	
143B-550	Added	137	1(b)	
143B-556	Added	137	1(b)	
143B-557	Added	137	1(b)	
146-30	Amended	140	93.1(a)	
146-30	Amended	177	9	
147-11	Amended	67	26(a)	
147-33.30	Repealed	137	1(a)	
147-33.31	Repealed	137	1(a)	
147-33.32	Repealed	137	1(a)	
147-33.33	Repealed	137	1(a)	
147-33.35	Repealed	137	1(a)	
147-33.36	Repealed	137	1(a)	
147-33.37	Repealed	137	1(a)	
147-33.38	Repealed	137	1(a)	
147-33.39	Repealed	137	1(a)	
147-33.40	Repealed	137	1(a)	
147-33.41	Repealed	137	1(a)	
147-33.42	Repealed	137	1(a)	
147-33.43	Repealed	137	1(a)	
147-33.44	Repealed	137	1(a)	
147-33.45	Repealed	137	1(a)	
147-33.46	Repealed	137	1(a)	
147-33.47	Repealed	137	1(a)	
147-33.48	Repealed	137	1(a)	
147-33.50	Repealed	137	1(a)	
147-33.51	Repealed	137	1(a)	
147-33.52	Repealed	137	1(a)	
147-33.55	Repealed	137	1(a)	
147-33.56	Repealed	137	1(a)	
147-33.60	Repealed	137	1(a)	
147-33.61	Repealed	137	1(a)	
147-33.62	Repealed	137	1(a)	
147-33.63	Repealed	137	1(a)	
147-33.64	Repealed	137	1(a)	
147-33.65	Repealed	137	1(a)	
147-33.66	Repealed	137	1(a)	
147-33.67	Repealed	137	1(a)	
147-33.68	Repealed	137	1(a)	
147-33.70	Repealed	137	1(a)	
147-33.71	Repealed	137	1(a)	
147-33.75	Added	174	2	
147-33.76	Added	174	2	
147-33.77	Added	174	2	
147-33.78	Added	174	2	
147-33.79	Added	174	2	
147-33.80	Added	174	2	
147-33.81	Added	174	2	
147-33.82	Added	174	2	
147-33.83	Added	174	2	
147-33.84	Added	174	2	
147-33.85	Added	174	2	
147-33.86	Added	174	2	
147-33.87	Added	174	2	
147-33.88	Added	174	2	
147-33.91	Added	174	2	
147-33.92	Added	174	2	
147-33.95	Added	174	2	

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147-33.96	Added	174	2	
147-33.97	Added	174	2	
147-33.98	Added	174	2	
147-33.99	Added	174	2	
147-33.100	Added	174	2	
147-33.101	Added	174	2	
147-33.102	Added	174	2	
147-33.103	Added	174	2	
147-45	Amended	137	4(ff)	
147-68	Amended	67	24A	
147-69.2	Amended	160	2	
147-86.22	Amended	140	93.1(a)	
147-86.30	Added	147	2	
147-86.31	Added	147	2	
147-86.32	Added	147	2	
147-86.33	Added	147	2	
147-86.34	Added	147	2	
147-86.35	Added	147	2	
147-86.36	Added	147	2	
148-37.1	Added	67	16.3(a)	
148-62.1	Amended	144	45	
150B-1	Amended	189	14	
150B-21	Amended	140	93.1(a)	
150B-21.1	Amended	69	3	
150B-21.1	Amended	69	5	7/1/03
150B-21.1	Amended	148	4	
150B-21.1	Amended	148	5	7/1/02
150B-21.4	Amended	140	93.1(a)	
150B-21.9	Amended	140	93.1(a)	
150B-21.28	Amended	140	93.1(a)	
150B-29	Amended	190	4	
150B-33	Amended	190	5	
150B-34	Amended	190	6	
150B-36	Amended	190	7	
150B-37	Amended	190	8	
150B-44	Amended	190	9	
150B-49	Amended	190	10	
150B-51	Amended	140	94.1	
150B-51	Amended	190	11	
150B-52	Amended	140	94	
150B-52	Amended	190	12	
153A-155	Amended	103	5	
153A-156	Amended	140	75(b)	
153A-156	Added	2	2	
153A-212.1	Amended	67	15.4(e)	
153A-221.1	Amended	137	4(hh)	
153A-230.1	Amended	140	93.1(a)	
153A-230.2	Amended	140	93.1(a)	
153A-230.5	Amended	140	93.1(a)	
153A-274	Amended	70	1	
153A-277	Amended	70	2	
158-12.1	Added	67	14.9	
159C-3	Amended	179	3	
159C-5	Amended	179	4	
159C-6	Amended	179	5	
159C-7	Amended	179	6	
159C-8	Amended	179	7	
159C-11	Amended	179	8	
159C-19	Amended	179	9	

G.S. §	Effect	Session Laws Chapter	Session Laws Section	Postponed Effective Date
159C-28	Amended	169	42	7/1/01
159D	Amended	179	2	
159D-1	Amended	179	2	
159D-2	Amended	179	2	
159D-3	Amended	179	2	
159D-4	Repealed	179	2	
159D-4.1	Added	179	2	
159D-5	Amended	179	2	
159D-6	Amended	179	2	
159D-7	Amended	179	2	
159D-8	Amended	179	2	
159D-9	Amended	179	2	
159D-10	Amended	179	2	
159D-11	Amended	179	2	
159D-12	Amended	179	2	
159D-13	Amended	179	2	
159D-14	Amended	179	2	
159D-15	Amended	179	2	
159D-16	Amended	179	2	
159D-17	Amended	179	2	
159D-18	Amended	179	2	
159D-19	Amended	179	2	
159D-20	Amended	179	2	
159D-21	Repealed	179	2	
159D-22	Repealed	179	2	
159D-23	Amended	169	43	7/1/01
159D-23	Amended	179	2	
159D-24	Amended	179	2	
159D-25	Amended	179	2	
159D-26	Amended	179	2	
159D-27	Amended	179	2	
159D-35	Amended	179	2	
159D-36	Amended	179	2	
159D-37	Amended	179	2	
159D-38	Amended	179	2	
159D-39	Amended	179	2	
159D-40	Amended	179	2	
159D-41	Amended	179	2	
159D-42	Amended	179	2	
159D-43	Amended	179	2	
159D-44	Amended	179	2	
159D-45	Amended	179	2	
159D-46	Amended	179	2	
159D-47	Amended	179	2	
159D-48	Amended	179	2	
159D-49	Amended	179	2	
159D-50	Amended	179	2	
159D-51	Amended	179	2	
159D-52	Amended	179	2	
159D-53	Amended	179	2	
159D-54	Amended	179	2	
159D-55	Amended	179	2	
159D-56	Amended	179	2	
159D-57	Amended	179	2	
159G-6	Amended	156	3	
159G-10	Amended	150	2	7/1/01
159I-25	Amended	140	93.1(a)	
159I-28	Amended	140	93.1(a)	
159I-29	Amended	140	93.1(a)	

G.S. §	Effect	Session Laws Chapter	Session Laws Section	Postponed Effective Date
159-13	Amended	140	80	
159-123	Amended	69	2	
160A-23.1	Amended	140	34	
160A-215	Amended	103	9	
160A-215.1	Amended	140	75(c)	
160A-215.1	Added	2	3	
160A-289.1	Amended	67	15.4(f)	
160A-300.1	Amended	97	2(a)	
160A-300.1	Added	37	1	
160A-311	Amended	70	3	
160A-314	Amended	70	4	
160A-426	Amended	164	1	
160A-428	Amended	164	2	
160A-430	Amended	164	4	
160A-432	Amended	164	3	
160A-443	Amended	186	1	
160A-480.3	Amended	181	2.5	
160A-486	Amended	140	93.1(a)	
160A-610	Amended	67	25.6	
161-10	Amended	167	1	
161-10	Amended	169	44	7/1/01
162A-2	Amended	70	5	
162A-6	Amended	70	6	
162A-9	Amended	70	7	
163-38	Added	114	1	
163-38	Added	114	1	
163-39	Added	114	1	
163-40	Added	114	1	
163-40.1	Added	114	1	
163-132.1	Amended	140	81	
163-132.5	Amended	140	93.1(c), (l)	
163-227.2	Amended	136	2(a)-(d)	
163-278.5	Amended	140	82	
163-278.13B	Amended	136	1	
163-278.39A	Amended	140	83	
163-278.39A	Amended	140	84	
164-37	Amended	137	4(k)	
164-40	Amended	137	4(ii)	
164-43	Amended	137	4(jj)	
166A-6.1	Amended	109	6	
168-1	Amended	121	33	
168-5	Amended	121	34	

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